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Presumed when new note is given to take up old one. 134. *Contra.* 204.

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*Presentation.*

Not made in time, where a bank receives a draft payable at another bank in the same city, but distant three miles, and does nothing until the next day, when it mails the draft; on the day of the receipt of the draft, and also of the mailing, there were funds in the other bank to pay the draft; on the third day the draft was received by the

**BILLS AND NOTES—(continued.)**

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## CHARITABLE REQUESTS AND DEVISES—(continued).

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Refusal of payment of a depositor's check on the allegation of his not being the owner of the funds deposited, is clearly against public policy, unless an attachment has been laid by a creditor or a demand made by the true owner. 604.

"Deputy Treasurer," when appended to the depositor's name in opening the account, is an acknowledgment by the depositor that the money is held for some one else not named, but does not change the ordinary relations between the bank and the depositor and would alone be no ground for refusing payment of his checks. 604.

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Change of home and of place of voting will be conclusively presumed when a man goes to another State, and acquires a homestead under the Acts of Congress, or exercises the rights of an elector to which a permanent residence is requisite; subsequent statements under oath, that he did not mean to change his domicile, but intended to return to his former home, cannot be permitted to control the decision of his right to vote. 735.

*Fourteenth Amendment to the Const. U. S.*

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*Contra*, *Santa Clara Co. v. S. P. R. R. Co.* (118 U. S. 394, 396). 781.

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## CONSTITUTIONAL LAW—(continued).

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*Construction.*

Decisions of the U. S. S. Ct. are binding upon the State Courts, in deciding a conflict between State laws and the National Constitution. 79, 733.

*Due Process of Law.*

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Principles, and not form, must be considered in determining whether a statute affords due process of law. 700, 704.

In criminal cases, there must be a proper arrest, a legal preliminary hearing, the witnesses must confront the accused, counsel must be provided, a jury must determine the question of guilt, the trial must be speedy and public, the conviction must be upon legal evidence, and the accused shall not be compelled to testify against himself. 700.

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An erroneous decision of a State Court is not such deprivation of property without due process as to raise a federal question. 702.

*Eminent Domain.* See BRIDGES, *Consequential Injuries*.

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The U. S. may acquire the use of land, lying in or belonging to a State without the consent of the State or the cession of its jurisdiction. 775.

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*Law of the Land.*

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*Liberty.* See CRIMINAL LAW, POLICE POWER.

Liberty means more than mere freedom from physical search; it is right to use one's faculties in all lawful ways, to live and work when he will, and to earn his livelihood in any lawful calling. 532, 545.

Arms cannot be prohibited to individuals by a State, so as to deprive the National government of a rightful means of maintaining public security. 549.

*Negligence.* See NEGLIGENCE.*Nuisance.* See NUISANCE.*Obligation of Contracts.* See CONTRACTS.*Pennsylvania Constitution.*

Art. XVI. § 8, Const. 1874, providing that "municipal and other corporations and individuals invested with the privilege of asking private

CONSTITUTIONAL LAW—(*continued*).

property for public use, shall make just compensation for property taken, injured or destroyed by the construction or enlargement of their works, highways, or improvements, which compensation shall be paid or secured before such taking, injury, or destruction," discussed. 1, 384.

Injury here means a legal wrong for which an action of damages might be brought. 390.

*Police powers of the States.* See POLICE POWER.

*Trial by Jury.*

A State may provide another mode of trial in a civil action. 702.

## CONTEMPT OF COURT.

*Out of Court.*

Criticism made out of Court is not. 206.

## CONTINUANCE.

*Practice.*

Granting is discretionary with the trial Court. 63.

## CONTRACTS.

*Cancellation.*

Executed contracts are not ordered to be cancelled unless there is positive proof of fraud and false representation. 338.

*Consideration.*

Expenditure of promisee's money for his own benefit, if at the request of the promisor, is a sufficient consideration to sustain a promise to repay the amount expended. 606.

Mutual promises, to contribute equally to the capital required to carry out an agreed enterprise and share the profits, form a sufficient consideration for the agreement. 606.

Performance of a proposition, coupled with a promise, is a sufficient consideration, though no assent be given at the time of the promise. 185, 192, 193.

Promise to reimburse a nephew, if he would take a trip to Europe, is a sufficient consideration to sustain an action, and is distinguishable from a mere promise to make a present or render gratuitous service where no burden is incurred by the promisee. 606.

Single consideration for a contract for the sale of a business, with an agreement in restraint of trade, will invalidate the whole contract when the agreement in restraint of trade is void; otherwise of separable considerations. 533.

*Evidence.*

Overtime cannot be made out by proof of time spent in going and coming from work. 206.

*Form.*

Receipts embodying a contract are as binding as any other contract, though receipts are usually subject to explanation. 533.

*Interpretation.*

Generally, the law of the place of making the contract at the time the contract is made, forms part of the obligation of the contract and prevails. 308, 622.

Unless the contract provides otherwise. 308.

Or, unless the contract does not indicate by what law the contract was intended to be governed. 624.

Uncertainty in the contract itself allows examination of the condition of the parties, the subject-matter, and the surrounding circumstances. 134.

Acts of the parties prevail over the literal meaning of their written contract. 338.

*Lobbying.*

Contract for hire to lobby is void. 63.

**CONTRACTS—(continued).**

*Obligation of.* See **INSOLVENCY**.

Protection from the Const. U. S. extends to State institutions and laws, but not to the State Courts, or to executive officers, or private persons. 466.

*Proposal.* See **LAND**, *Offer to Sell*.

Assent, definitely made, is necessary to a valid proposal. 269.

Unless duty requires a continuing proposal. 269.

*Rescission.*

Mutual mistake in the sale of a promissory note, as to the insolvency of the maker, relates only to the value and not to the identity of the note, and is not such mutual error as will permit the rescission. 661.

*Restraint of Trade:* see *Consideration*.

Physician may make a valid contract to refrain from practising in a particular place for an unlimited time and the contract will be enforced by injunction. 606.

Valid when limited as to place but unlimited as to time. 606.

Void when the contract is limited in period of time, but unlimited as to place. 533.

*Silence.*

Asking a question, embodying a request to make a contract, does not have such result unless an answer is secured. 260.

Fraud or known action must attend upon silence to give it contractual force. 264.

Course of business may supply the place of an answer. 266.

*Specific Performance.*

Personalty must be articles of peculiar value, from curiosity, antiquity, or affection, or which no one but defendant could supply, or else specific performance will be refused. 466.

*Validity.*

Generally contracts have the same force everywhere. 308.

Except when injurious to the interests of the State. 303, 308.

Waiver of conditions of a contract is a defence to an action for the breach. 206.

Act of God dissolves a building contract, but does not prevent recovery for labor and materials furnished. 206.

**COPYRIGHT.**

*Assignee.*

The representations of the assignor, when originally publishing, that the edition was limited and that there should be no reprint, are binding upon his assignee: the copyright is, doubtless, stripped of its property value, but continues available for protection. 660.

*Photographs.*

Damages are not recoverable for reproduction of a photograph. 402.

Employé is not liable for principal's violation of a copyright of a photograph. 402.

Reproduction of a photograph is punishable only by forfeiture of the plates and sheets, and one dollar for every sheet found. 402.

**CORPORATIONS.** See **CITIZENS**, **CONSTITUTIONAL LAW**, **COURTS**.

*Agents.* See **ANIMALS**.

Corporations are as liable for the wrongful acts and neglects of their servants and agents, done in the course and within the scope of their employment, as individuals. 668.

The acts or representations of the officers are binding upon the corporation, when their authority depends upon the performance of a condition precedent, or the existence of an extrinsic fact, and the question of compliance is to be determined by them, or rests peculiarly within their knowledge. 671.

## CORPORATIONS—(continued).

*Assessments for Unpaid Instalments.*

Shareholders need not all be made parties to a proceeding in equity, to order an assessment. 164, 169.

Subscribers to the capital stock of a bank are liable for unpaid instalments upon their subscriptions, though the by-laws and stock subscriptions may have been illegal, because the trustees were not stockholders; the alleged subscribers having acquiesced in the acts of such trustees for years and allowed themselves to appear as subscribers, are bound. 735.

*By-Laws.*

Reasonable by-laws alone are valid. 366.

Binding only upon the stockholders and officers. 671.

*Capital Stock.*

No implied power to vary the amount or number of shares. 686.

The Courts cannot effect an increase or diminution. 682.

Not even by a power to dissolve the corporation. 686.

Over issued is distinguished from irregularly issued, in being in excess of charter power and so void, while the latter is wanting in prescribed formalities and is merely voidable. 684.

Overissued stock can be made valid by a subsequent legal increase of the stock. 691.

Maryland Courts have not decided upon the validity of irregularly issued stock. 692.

Change required to be approved by the public officers, can only be questioned by the State after such approval. 687.

Change according to formalities prescribed by general law, cannot be rendered valid by an estoppel, when the limit of the law is exceeded. 688.

Otherwise if the formalities are not fully observed. 689.

*Certificates of Stock, Illegally Issued.*

New York decisions reviewed and the corporation held liable for acts of its officers within the apparent scope of their authority. 672, 674.

So in Pennsylvania. 676. (Even in case of forgery. 683.)

And in Maryland. 677.

And in England. 679.

*Moore v. Citizens' National Bank of Piqua*, 111 U. S. 156, criticised for requiring a transferee to look into a previous transfer. 680, 681.

Dictum of WALLACE, J. (23 Blatchford, 494), criticised for requiring the transfer of a certificate, issued in the name of a fictitious person, to be made upon the corporation books, before the holder can claim to be *bona fide*, without notice. 683.

*Charter.*

All persons dealing with the corporation, must observe the chartered powers, at his peril. 671.

When fraudulently issued in excess of the capital, under circumstances rendering the company liable, damages are recoverable. 674, 682.

In Massachusetts, the corporation will be required to buy the requisite amount of valid stock. 682.

Measure of damages is the market value of the stock at the date of demand for a transfer, or if no demand is made, at the date of filing the bill. 683.

Vendor impliedly warrants that the certificate was issued by the proper officers and sealed with the corporate seal, but not that it may not have been fraudulently issued in excess of the charter powers. 682.

But the vendee has no recourse against the vendor, in case of a fraudulent overissue. 682.

*Congress.*

State corporations may be empowered by Congress to carry out the powers of Congress, and the different States cannot interfere. 775.

## CORPORATIONS—(continued).

*Contracts.*

Formalities of execution required by the charter, must be observed to render contracts binding upon the corporation. 670.

Defence of informal execution is not favored by the courts. 670.

*Directors.*

They occupy the relation of trustees toward the corporation and its property. 206.

A director may purchase the property of his corporation, at a foreclosure sale, made in good faith, and at which he was the highest bidder. 661.

No trust arises to the extent of relieving from personal responsibility or depriving of individual interest in a contract, where the officers of a railroad company, for the purpose of acquiring terminal facilities and with the expectation of being reimbursed for their outlay, enter into an agreement with other individuals to form a corporation for the purchase of such terminals. 661.

When the directors knowingly pledge overissued stock, they may be sued in a separate action, or jointly with the corporation. 682.

*Fines.*

Defined to be a pecuniary penalty to secure obedience to the by-laws. 369.

Indefiniteness may invalidate. 371.

Tax cannot be levied in the guise of. 370.

Reasonableness essential. 371.

Validity depends upon statutory authority. 370.

Rules imposing are construed against the corporation. 371.

*Foreign Corporations.*

Foreign corporations may be excluded by a State, unless in the employ of the National government or engaged in business which is strictly commerce, Interstate or foreign; the Fourteenth Amendment does not protect them from complying with terms of admission into a State, as they are artificial persons and not such citizens as to be entitled to all the privileges and immunities of citizens in the several States. 534.

Insurance companies of another State may be taxed for the privilege of doing business in this State, under a retaliatory statute; the charge is a license fee and not within the constitutional provision of this State in relation to equality of taxation. 662.

*Incorporation.*

A special privilege, not to be assumed without the assent of some governing power. 667.

*Malice.*

Imputed to corporations as well as to individuals. 669.

Exemplary damages allowed for. 669.

*President.*

With the assent of the directors, he may agree to an affirmance of a judgment against the corporation, and, thereafter, in the absence of any fraudulent intent, may agree with the creditors to buy the corporate property, at the execution sale, for his own benefit; he does not deal with the company and does not act under a temptation destructive of his duty. 801.

*Sale of Franchise.*

Irrigating company, incorporated to construct and operate a canal, may with the assent of its stockholders, sell its right of way, canal and other property to another similar corporation, if the sale is made in good faith and not to delay or defraud creditors. 801.

*Stockholders.*

A stockholder's bill will lie on an allegation of a fraudulent combination amongst the directors. 466.

Bill cannot be filed by a stockholder on his own behalf and other stockholders who might join, against the corporation and its directors, un-



CORPORATIONS—(*continued*).

less relief is asked which has been sought within the corporation and refused, or the bill contains such averments as to satisfy the Court that there is a sufficient reason for not applying to the corporation before filing the bill. 533.

*Subscription to Stock.*

*Bona fide* purchaser, without notice of any sum being due, cannot be made to pay. 206.

Certificates when received, require the subscriber to pay. 204.

Subscription to the stock of a proposed business corporation may be procured by a secret agreement of the promoters with the subscriber, to buy from him within one year, his stock at the subscription price; unless there is actual fraud, the promoters may facilitate the formation of the company in this way, and this is not a contract between the subscriber and the corporation. 533.

Payment of par value not evaded by agreement to issue full paid stock at 40 per cent. of par. 163.

Payment of par value not evaded by agreement limiting assessment for balance due to \$10. 163.

Receiver may sue for balance due. 167, 169.

Statute of Limitations does not apply to, until an assessment or a call. 164, 171.

Written contract determines the rights of the parties. 168.

Subscription made by signing a paper, containing an agreement to form a corporation with a capital of \$40,000, in shares of \$100 each, each signer to take the number set opposite his name, is not binding unless all the capital is subscribed, and is not waived by taking part in conversations before the organization. 661.

*Ultra Vires.* See *Capital Stock, Congress.*

No defence to legal proceedings *in tort*. 668.

Applicable to a contract, because the party dealing with the corporation is under no obligation to enter into the contract. 669.

The term *ultra vires* is used with different meanings as applied to an act not to be performed by the corporation without the consent of certain parties; it is then generally void, *in toto*, and the corporation may so plead. 685.

Or, as applied to an act not authorized with reference to some specific purpose, circumstances will then determine whether the corporation may so plead. 685.

## COSTS.

*Unconstitutional.*

Attorney fee of \$25 cannot be imposed by statute, upon a railroad company, unsuccessfully defending an action; it is a denial of equal rights with natural persons and is void. 605.

## COURTS. See CONTEMPT OF COURT.

*Court of Claims.*

Jurisdiction limited to the terms of the Act of Congress. 340.

*Domicile.*

*Non-resident alien* has the personal privilege, under § 1, Act of March, 1887, to plead in abatement in an original, or move to remand on a removal, that he is not a resident of the district where the civil action has been brought; but his opponent may not use this objection to procure a remand to the State Court after the alien has removed the case; residence is not a jurisdictional fact. 666.

Citizenship, when the foundation of the jurisdiction, requires the suit to be brought where the plaintiff or defendant resides. 538.

Corporation is an inhabitant, since the Act of March 3, 1887, only of the district where its principal place of business is, when sued for an infringement of a patent right, there being no statute in Illinois, requir-

COURTS—(continued.)

ing the appointment of an agent upon whom process might be served. 735.

Citizenship, to give jurisdiction to the Circuit Courts of the U. S., must be that in another State of the Union or a foreign State and not that in a Territory of the U. S. or the District of Columbia, and a distinct statement of the citizenship must be made in the pleadings, or else the Circuit Court or Supreme Court will of its own motion take notice of the defect in jurisdiction. 738.

*Equity Courts.* See *Powers of U. S. Courts.*

Express statute necessary to extend their jurisdiction to criminal or administrative matters. 339.

*Jurisdiction of U. S. Courts.* See *Court of Claims, Domicile, REMOVAL OF CAUSES.*

Bill in equity cannot be brought to enforce a mortgage which is in legal effect merely an assignment of a contract, unless the mortgagor could have sued to recover the contents of a chose in action. 406.

Parties are arranged according to facts, when deciding upon jurisdiction and not the form of pleading. 212.

Land patents granted by the United States are sufficient foundation for jurisdiction, without an allegation of citizenship. 538.

Injunction bill against an ejectment judgment need not contain an averment of citizenship, as the jurisdiction is ancillary. 538.

Claims against the United States, over which the U. S. Circuit Courts are given jurisdiction by Act of 1887 (24 Stat. 505), include claims by a purchaser of timber lands, under Act of 1878 (20 Stat. 89), or his assignee, to have a patent issued for the same. 666.

Jurisdiction of actions brought by the United States and involving less than \$500, is not vested in the U. S. Circuit Courts by § 629, Rev. Stat., granting original jurisdiction, "of all suits at common law, where the U. S. or any officer thereof, suing under the authority of any Act of Congress, are parties." 610.

*Powers of the U. S. Courts.*

Equitable powers may be exercised in an action at law to prevent abuse of process. 209.

Privileges claimed under Const. U. S. must be set up in the proper Court below, to be reviewable under § 709, Rev. Stat. U. S. 37.

*State Courts.*

No jurisdiction over non-residents can be conferred on State Courts. 616.

CRIMINAL LAW.

*Accessory.*

Where a fight resulted in death, one who accompanied the slayers to see what would happen in an attempt to drive the deceased from the town, without serious injury being intended, is not guilty of murder as an accessory. 606.

*Bastardy.* See *ILLEGITIMATES.*

*Arrest.*

Preliminary examination should precede removal to district where offence was committed. 134.

Discharge by magistrate after arrest and examination, is not a bar at a second arrest on the same charge, as a person has not been once in jeopardy, until put upon trial, in a Court of competent jurisdiction, on indictment or information sufficient in form and substance to sustain a conviction, and a jury has been charged with his deliverance. 735.

Arrest may lawfully be made at a congressional election, without a warrant, by a deputy U. S. marshal, who sees a vote rejected because the party has not been naturalized, hears him advised to try another polling place, follows there and finds he has voted; the officer need not  
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## CRIMINAL LAW—(continued).

be an eye- or ear-witness of every fact necessary for the commission of the crime. 736.

*Conspiracy.*

Indirect acts sufficient to constitute the crime. 63.

*Due Process of Law.* See CONSTITUTIONAL LAW.

*Fourteenth Amendt. Const. U. S.* See CONSTITUTIONAL LAW, *Intoxication, Witnesses.*

Intended to prevent unjust discrimination between citizens. 705.

A presentment or an indictment by a grand jury, is not required by this amendment. 548, 704.

Jurors may be qualified by statute, though they have formed an opinion from rumor or the newspapers. 27, 46, 704.

Jurors may be peremptorily challenged only according to a regulating statute. 45.

Jury trial is not such a privilege or immunity of national citizenship as cannot be changed or abolished by a State acting within its own constitutional limitations. 549.

A statute providing that "any person charged \* \* \* with being an inebriate, habitual or common drunkard, shall be arrested and brought before a Judge of a Court of Record for trial; \* \* \* and if convicted \* \* \* shall be sentenced to confinement in any inebriate or insane asylum in this State; \* \* \* provided that some relative or friend \* \* \* shall execute a bond conditioned that he will pay for the support of such inebriate \* \* \* during his confinement," is in violation of the Constitution of the United States, Amend., Art. 14, § 1, which declares that no State shall "deprive any person of \* \* \* liberty, \* \* \* without due process of law;" nor "deny to any person within its jurisdiction the equal protection of the laws." 693.

*Imprisonment.*

Validity, on habeas corpus, depends upon the judgment and not the mittimus. 467.

*Incest.*

Seduction of a natural daughter is as much incest as that of a lawful daughter. 467.

*Insanity.*

An insane, uncontrollable impulse is not sufficient to destroy the criminal responsibility of the accused, when he knows the nature and consequences of the particular acts charged against him and that they are wrong. 645.

The theory of an irresistible impulse or moral insanity is dangerous to the interests of society and the security of life, and is repudiated by the greater number of the Courts. 650.

*Intoxication.* See 14th Amendt. Const. U. S.

No lawful punishment for drunkenness in strict privacy, without any exposure to or interference with the public or any individual. 694.

Statutes relating to habitual drunkenness are beneficent, but the lawful right of control terminates with the judicial determination of removal of the conditions. 697.

The jury may consider the intoxication of the accused at the time of the murder, not as an excuse, but to determine his capability of premeditation and intent to kill. 645, 651.

Voluntary intoxication is not an excuse for crime. 651, 653.

Otherwise of involuntary intoxication. 655.

Greater liability to be maddened by liquor, no excuse. 654.

*Delirium tremens*, though the result of prior vicious habits, is an excuse because shunned rather than courted by the accused. 656.

No presumption of continuance of *delirium tremens*, and its existence must be established by the accused. 656.

Permanent insanity from drink is an excuse. 656.

**CRIMINAL LAW—(continued).**

*Dipsomania*, or a disease overmastering the accused's will and compelling him to drink, is a question of fact for the jury. 658.

Some Courts will not allow the defence of *dipsomania*. 658.

Drunkenness is an aggravation of the crime committed. 658.

***Jurisdiction.***

Abduction from another jurisdiction, by the law officers of the State, will not confer jurisdiction. 534.

***Manslaughter.***

Husband is guilty of the death of his wife from exposure in mid-winter, by suffering her to be out of doors all night while intoxicated and insufficiently clad, though within reach of the house. 801.

***Murder.***

Inciting to commit a murder, renders the person who incites, guilty of murder. 42.

The killing of a pursuer who is seeking to arrest the fugitive for a felony just committed, is murder, even though no warrant has been issued. 64, 645.

Insulting words, alone, are not a sufficient provocation to reduce a murder to the grade of manslaughter. 735.

***Seduction.***

Marriage, ensuing on a seduction under promise of marriage, prevents a criminal prosecution, without regard to the bad faith in marrying. 404.

***Self-defence.***

Courage or cowardice of one defending himself, is not to be considered, but only honesty of belief of danger. 606.

***Trial.***

Counsel may pursue any legitimate line of argument to the jury. 402.

***Witnesses.* See LIQUOR LAWS.**

Where the accused is allowed to testify in his own behalf, there is a diversity as to the inference which the jury may draw from his failure to testify. 701.

Accused may be cross-examined, when offered as a witness in his own behalf. 36, 705.

**DAMAGES. See MUNICIPALITIES, NEGLIGENCE.**

***Conversion.***

When shares of stock are converted under an honest mistake, the owner may recover the highest market price reached by the stock, within a reasonable time after requiring knowledge of the conversion; but the owner must make the loss as light as possible, and where the facts are undisputed and not the foundation for different inferences, the Court will decide when the owner had sufficient time to go on the market and buy other shares. 661.

***Exemplary.***

Injuries inflicted in a wanton, malicious, and outrageous manner by the employes of a corporation, whether ratified or not, are ground for recovery against the corporation. 338.

Injuries inflicted in a wanton, brutal, and malicious attack with a deadly weapon, and without provocation, are ground for damages. 402.

Pecuniary ability of defendant admissible to obtain a sufficient verdict. 402.

Wilful removal of soil and destruction of fences are not ground for exemplary damages, in a civil action. 534.

***Hypothetical.***

Not the foundation of an action. 402.

***Legal Proceedings.***

Malicious abuse of process or bad faith in prosecuting legal proceedings, cannot be made the basis of an action, unless the person aggrieved has been arrested or his property seized. 604.

**DAMAGES—(continued).***Measure of.*

Living expenses of deceased, and not merely food and clothing, are to be deducted from damages for his death. 135.

Value of the goods is the extent of the verdict, in an action of claim and demand. 64.

Par value of bonds issued to build a court-house, is the measure of damages, when the contractor has failed to complete the building. 338.

Corporations are liable to the same rule as individuals, for injuries to property. 383.

Latent hereditary disease, which had never before exhibited itself, being developed in a child, as the result of an injury occasioned by the negligence of a railroad company, the entire damage is recoverable as the accident was the proximate cause. 801.

**DEBTOR AND CREDITOR.***Time and Labor.*

Where no fraudulent intent is shown, a debtor may work gratuitously upon the separate property of his wife and pay for the materials used in such work, without charging the wife's property with his debts. 801.

Creditors have no control over a debtor's time. 801.

**DECEDENT'S ESTATE. See CHARITABLE ESTATES, ILLEGITIMATES, WILLS.***Implied Contracts.*

Services rendered cannot be sued for, because of mere expression of gratitude. 191.

Services rendered by request of decedent may be sued for, without regard to the expectations of a legacy. 190.

Services voluntarily rendered in hope of a legacy, cannot be sued for. 189.

**DEER. See ANIMALS.****DIVORCE.***Adultery.*

Husband conniving at wife's adultery, cannot obtain a divorce on that ground. 359.

*Cruelty.*

Acts of cruelty, antedating the changes specifically made in the complaint and not specifically pleaded, may be shown as confirmatory and cumulative evidence in support of the fact pleaded. 802.

*Desertion.*

Refusal to occupy the same bed is not, where the parties continue to live together in the same house and observe other marital duties. 802.

*Legislative.*

Territorial legislature may grant a divorce, when either party is a resident, without notice to the other party or cause shown. 467.

*Residence.*

Removal from a State, because dissatisfied with its divorce laws, immaterial if new residence is to be permanent. 534.

Otherwise, if to continue only long enough to obtain a divorce. 534.

*Separation.*

Defence made on the ground of divorce proceedings in another State, where wife did not appear, and was only served with a final decree, is unavailing. 467.

*Suit for.*

Actions for divorce are personal. 471.

Differ from ordinary personal suits in fixing the status, the universal conclusiveness of the judgment and published notice to the adverse party being sufficient. 474.

**DIVORCE—(continued).**

*In personam, quasi in rem.* 474.

Proceeding to fix the status, conclusive upon all the world, yet not a proceeding against a thing. 475.

Judgment is conclusive everywhere, when both parties are in court. 476.

One party must be a resident of the jurisdiction. 476.

Publication is sufficient notice to the absent party 477.

Judgment frees both parties, except in New York. 481, 484.

New York doctrine of the exclusive jurisdiction of each State over the status of the wife or husband domiciled in New York, so as to prevent divorce on application to a tribunal of another State by the husband or wife domiciled in the other State, is one of great confusion. 487, 489.

Compromise of a suit for divorce by the wife, in which the husband conveyed certain lands to the wife and promised to reform his drunken habits, is not a bar to a subsequent divorce suit by the wife on account of the drunken habits not having been reformed but rather increased. 802.

**DOGS.** See **ANIMALS.**

**DOWER.**

*Adultery.*

Forfeiture of dower does not necessarily ensue. 359.

After desertion, dower is not forfeited by adultery. 359.

**EASEMENTS.**

*Appurtenances.*

This word only passes strictly necessary incorporeal rights, etc. 301.

Drain is not affected by a deed made after more than twenty years' maintenance. 64.

*Forfeiture.*

Restriction, when violated, creates a liability to forfeiture to the grantor. 136.

*Implied Grant.*

An existing passage will pass with the dominant tenement, in the absence of general words. 288, 300.

Also, where the easement is part of the thing described. 296.

Also, where the easement is necessary for the proper enjoyment of the thing specifically described. 298.

Also, where the easement is highly convenient and beneficial. 299.

*Implied Reservations.*

Actual necessity, a requisite in such case. 301.

*Water.*

Filling a reservoir is an unreasonable use of water in a dry season of three months in a year, when a lower mill-owner is thereby deprived of water for five days. 606.

The Pennsylvania doctrine, that the upper mill-owner may detain water, in time of draught, subject to a finding by the jury of the reasonableness of so doing, dissented from in Connecticut. 607.

**ELECTIONS.**

*Majority.*

A law of Maryland, providing that a majority of the voters shall determine, etc., means a majority for the particular thing or person and not a majority of the whole number of voters or of all who actually voted for other things or persons. 509.

So held in a similar case, S. Ct. U. S. 515.

*Contra*, in some other States. 517.

Qualified voters who absent themselves, are presumed to assent to the expressed will of a majority of those voting. 509.

**EMINENT DOMAIN.***Damage from.*

Abutting properties are not legally damaged by an elevated railroad wholly built on property of the railroad. 1.

*Public Use.*

Drains cannot be laid for the benefit of an adjoining owner. 135.

**EQUITY.***Bill of Review.*

Errors in law only can be reversed by a pure bill of review. 470.

Filing in U. S. Circuit Ct. may be after an appeal has been taken to the Supreme Court, but not prosecuted. 470.

*Injunction.*

When the legal right is unsettled, there is ground for refusal of an injunction. 67.

**ERRORS AND APPEALS.***Practice.*

Dismissal refused by State Supreme Court, when appellant had suffered an adverse decree in a U. S. Court, before appealing his suit in the State Court. 207.

Exception not taken below, not considered. 329, 331.

*Writ.*

Seal of the Court necessary to constitute a valid writ of error. 328.

**ERRORS AND APPEALS IN U. S. S. CT.***Practice.*

Rulings of a Circuit Court during a trial without jury, are not reviewable unless a written waiver of a jury has been filed. 207.

Citation must issue when affidavit does not show the amount in controversy. 206.

Application for the writ is to be made to Chief Justice of State Court or Justice of U. S. S. Ct., presiding in that circuit. 41.

*Federal Question.*

Jurisdiction of U. S. S. Ct. limited to Federal questions only. 41.

None from U. S. Ct. to a State Court, for violations of State Constitution. 41.

Criminal cases can be removed from U. S. Circ. Ct. only on certificate of division of opinion by the judges of that Court. 40.

Refused by S. Ct. U. S., where, on the face of the record, the Federal question has been rightly decided in the State Court. 23.

State Court must not overlook the Federal question, necessarily involved. 139.

Record must show that a right had been denied. 340.

**ESTOPPEL.***Parties.*

Third parties cannot invoke an estoppel. 51.

*Silence.*

There must be a duty of speech. 260.

Actions must be performed, under claim of right which involve loss. 267.

Intention, known at the time, will operate. 268.

**EVIDENCE. See ATTACHMENT.***Affidavits. See WITNESSES.**Letters.*

An agent of the plaintiff may be impeached by letters written by him. 736.

*Practice.*

Rehearing not granted to admit evidence not offered. 62.

But where counsel omit to present testimony which he has ready, under

## EVIDENCE—(continued).

a misapprehension of a decision upon an offer of testimony made by the other side, the Court will grant a rehearing, in an equity case. 736.

*Presumption.*

Identity of name in an Act of the Legislature, *prima facie* evidence of identity of person, unless the name is very common. 403.

## EXECUTION.

*Homestead.*

Family residence, actually and not nominally, is exempt as homestead, although situated in the business portion of a town and used in part for mercantile purposes. 534.

Popular sense of the term is to be followed in construing it in an exemption law. 534.

*Seal of the Court.*

Necessary for the validity of the writ. 325.

## EXECUTOR.

*De son tort.*

His own debt is not allowed to him. 135.

*Mismanagement.*

Receiver will be appointed when an executrix mismanages the estate. 135.

## EXPRESS COMPANIES.

*Common Carriers.*

Dispatch and express companies are held to be common carriers on the ground of public policy. 556, 558.

*Inter-State Commerce Act.*

Railroads conducting such business, must observe the Act. 136.

Independent companies, not otherwise common carriers, are not within the Act. 136.

*Negligence.* See BILL OF LADING.*Taxation.*

License tax may be laid on express companies by the States. 182.

## FEES. See ATTORNEY AND CLIENT.

## FENCES.

*Insecure.*

Contributory negligence of owner of a horse does not prevent recovery, where a railroad fence is insecure. 138.

## FINES AND PENALTIES.

*Power of Court over.*

Affirmed on appeal, cannot be modified or remitted by the Court below. 63.

## FIRE INSURANCE. See INSURANCE.

## FORGERY.

*Jurisdiction.*

National Bank bookkeeper can be tried by a State Court. 65.

## FORMER RECOVERY.

*Not Available.*

Judgment recovered in New York against a non-resident served with process in Massachusetts, is void for want of jurisdiction, and is not a bar in a subsequent action in Massachusetts, where the defendant resided. 535.

## FRAUD.

*Employés.*

Profits may be divided between a contractor and an assistant engineer of the contracting company, where the latter has no connection with the contract. 338.



## GAS AND WATER COMPANIES.

*Cutting off Supply.*

Injunction will be granted during judicial investigation. 283.

Arrears of former tenant, not reason for cutting off. 284.

Dispute about amount due, not ground for. 284.

Threat of, renders a payment one made under duress. 284.

*Damages.*

For refusing supply, measured by deterioration in value of premises, pecuniary loss and expense of fixtures. 285.

*Meters and Governors.*

Not conclusive of the amount consumed. 281.

To be kept in order by the company. 282.

To be supplied by the company. 281, 283.

*Rates.*

Reasonable only will be sustained. 286.

Municipality may assess on every house. 286.

*Rules.*

Obligation to supply is recognized in America. 278.

Reasonableness required. 279, 280.

Deposit of money may be required before giving the service. 280.

Inspection of the consumer's premises may be made at stated intervals. 280.

*Turning on.*

Mandamus lies when refused for an invalid reason. 285.

## GUARANTY.

*Delivery.*

Cannot be questioned when guarantor entrusts to the party to be guaranteed. 65.

*Joint.*

When signed by three persons. 66.

*Acceptance.*

Notice of acceptance is unnecessary when it is direct and certain, and for a thing known or to be ascertained by ordinary care. 65.

*Revocation.*

A continuing guaranty may be revoked by request for surrender of the written guaranty before any liability is incurred. 207.

## HABEAS CORPUS.

*Jurisdiction.*

Habeas corpus issues from S. Ct. U. S., in criminal cases, where U. S. Circ. Ct. has no jurisdiction to render the judgment. 41.

## HARBORS AND HAVENS.

*Improvements.*

Police powers of the States authorize improvements in their harbors. 178.

## HIGHWAYS. See MUNICIPALITIES, TURNPIKES.

*Dedication.*

Conveyance to side of a street laid out on the public plan, but not opened, does not create an inference of. 211, 403.

Otherwise, if the street had been laid out by the vendor. 403.

Sale by plan creates an inference. 64.

Conveyance, by a boundary on a strip of land "reserved for a street and no other purpose," is a dedication, and the grantee or those claiming under him, have a right to enter on the strip and prepare it for travel as a street. 535.

Laying out and public use, create an inference of. 211.

Public squares not convertible into a park, where the title is held without a trust but subject to long user for standing wagons and hitching horses. 403.

**HIGHWAYS—(continued).***Obstructions.*

Horses are presumed to be roadworthy, though shying at a pile of lumber. 404.

*Title to Soil of.*

Conveyance of land on a highway, creates presumption of conveyance to center. 211.

**ICE. See MORTGAGE.***Cutting.*

Canals can be cropped for ice only by the canal owners. 243.

Great ponds may be cropped by any one as a public right. 241.

Mill ponds cannot be cropped by the riparian owner, but only by the pond owner. 242.

But the pond owner must not appreciably diminish the head of water at the dam, by cropping. 606.

Non-tidal stream can only be cropped by the riparian owner. 243.

Pool in non-navigable stream, can only be cropped under a private right. 242.

Tidal stream can be cropped in a reasonable manner by any one, under the public right. 231, 243.

Tidal stream must be cropped with care for the protection of innocent intruders. 231.

Travelling over ice in a tidal stream, a public right, to be exercised in a reasonable manner. 231, 240.

**ILLEGITIMATES.***Evidence of Paternity.*

Infant, six weeks old, cannot be offered in evidence and viewed by the jury, to prove paternity; such evidence is too vague, uncertain, and fanciful. 661.

*Inheritance Generally.*

Illegitimates, at common law, had no heirs save those of the body. 726.

This doctrine recognized in the U. S. 726.

Except in Connecticut. 726.

Statutes relating to inheritance do not create heritable blood generally, but merely in cases of lineal ascent or descent. 727.

Inheritance from the father apparently against public policy. 730.

By the father, scarcely allowed. 733.

*Inheritance. See Legitimated by Marriage.*

Alabama provides for inheritance both lineal and collateral. 720, 728.

Hence a brother of a deceased intestate bastard, by the same mother, inherits to the exclusion of the mother. 720.

The mother and her kindred inherit, as if legitimate. 732.

In Arkansas, the illegitimate may inherit and transmit inheritance, from and to any and all collaterals, legitimate or illegitimate. 728.

The mother and her kindred inherit as if legitimate. 732.

California recognizes heirship to the mother, but without collateral or lineal representation. 727.

And the father may create heirship by a written acknowledgment, especially made in the presence of a witness. 730.

The mother and her kindred inherit as if legitimate. 732.

Colorado provides for inheritance from the mother. 728.

And generally, on marriage of the parents, though this does not make the child legitimate. 731.

The mother inherits with brothers and sisters, taking one-half as her share. 732.

Connecticut did not adopt the common law, but recognized heritable blood, both ascending and descending, in a bastard. 726.

Delaware permits the mother and her kindred to inherit, as if legitimate. 732.

**ILLEGITIMATES—***(continued).*

Florida permits inheritance from the mother, as though legitimate. 727.

And by the mother and her kindred. 732.

Georgia permits inheritance irrespective of legitimate children. 728.

And representation amongst collaterals. 728.

The mother may take from the child. 732.

And shares with brothers and sisters, taking one-half as her share. 732.

Illinois now makes the illegitimate heir to any person from whom his mother, if living, could have taken. 728.

The mother may take from the child. 732.

And share with brothers and sisters, taking one-half as her share. 732.

Indiana permits inheritance from the mother, as though legitimate. 727.

And allows representation. 728.

And inheritance by the mother and her kindred. 732.

The bastard may inherit from the father if there are no other legitimate children, or no other legitimate heirs residing in the U. S. 730.

Iowa permits inheritance from the mother. 728.

And the mother and her kindred. 732.

And from the father, if paternity is acknowledged or proved during the father's lifetime. 730.

Such acknowledgment does not legitimate. 730.

Father may inherit, if the acknowledgment has been mutual. 733.

Kansas has the same provision as Iowa, respecting inheritance from the father. 730.

The mother and her kindred may inherit, as if legitimate. 732.

Father may inherit, if the acknowledgment has been mutual, and there are no living mother and issue. 733.

Kentucky permits inheritance from the mother, as though legitimate. 727.

And by the mother and her kindred. 732.

Louisiana forbids representation from legitimates. 728.

Allows inheritance from each other. 728.

And from the mother, if acknowledged and there are no lawful issue. 728.

Otherwise, only alimony. 728.

The mother inherits to the exclusion of brothers and sisters. 732.

The bastard may inherit from his father, if acknowledged, and there are no widow, descendants, ascendants or collaterals. 730.

But this gives no right of representation. 730.

The father and mother share equally, if they have acknowledged the illegitimate. 733.

Maine permits inheritance from the mother, without collateral or lineal representation. 727.

And generally, since 1864, on the marriage of the parents, but without being legitimated. 731.

The mother shares with the widow or husband of the illegitimate. 732.

Maryland permits inheritance between illegitimates. 728.

And by the mother and her kindred, as if legitimate. 732.

Massachusetts gives lineal representation, but no representation collaterally, in the mother's place. 728.

And by mother and her kindred, as if legitimate. 732.

Michigan permits inheritance from the mother, but without collateral or lineal representation. 727.

And by the mother and her kindred, as if legitimate. 732.

Minnesota permits inheritance from the mother, but without collateral or lineal representation. 727.

And by the mother and her kindred, as if legitimate. 732.

**ILLEGITIMATES—***(continued).*

And generally, when the parents marry, but without being thereby legitimated. 731.

Mississippi permits bastards to inherit from their mother and brother's children, and her kindred and their children and descendants from brothers and sisters of their father and mother, whether legitimate or illegitimate, and from their grandparents, but not from any ancestor or collateral kindred, if there be legitimate heirs in the same degree. 729.

Missouri denies collateral inheritance between illegitimates. 725.

But permits inheritance from the mother, as though legitimate. 727, 732.

Nebraska permits inheritance from the mother, without lineal or collateral representation. 728.

And by the mother and her kindred, as if legitimate. 732.

And generally, on the marriage of the parents, but without being legitimated. 731.

Nevada permits inheritance from the mother, but without lineal or collateral representation. 728.

And generally, on the marriage of the parents, but without being thereby legitimated. 731.

The mother may take from the child. 732.

New Hampshire has the same statutory provisions as Alabama and Colorado. 728, 732.

New Jersey makes the bastard heir to his mother, as if legitimate, in default of legitimate children. 729.

And the mother and her kindred, heirs to the bastard. 732.

New York provides, in default of legitimate children, that the bastard may inherit from his mother, as if legitimate. 728.

And the mother and her kindred, from him. 732.

North Carolina enables the bastard to share equally with the legitimate children in the personalty. 729.

In realty, the bastard may inherit from the mother, if she had no lawful issue. 729.

And from another bastard and from legitimates, by representation of brothers and sisters. 729.

The mother and her kindred are heirs to the bastard. 733.

Ohio permits inheritance between illegitimates. 725.

And from and as representatives of their mother. 729.

And by the mother and her kindred. 733.

Oregon permits the mother to inherit from the child, if there be no widow or surviving husband of the illegitimate. 732.

Pennsylvania allows legitimates and illegitimates to share equally in the estate of their common mother. 729.

And illegitimates from the same mother, take personalty as next of kin, and realty as heirs in fee simple. 729.

And the mother and her kindred from the illegitimate. 733.

Rhode Island permits inheritance between illegitimates. 720.

And from and by the mother. 727, 733.

Tennessee enables all brothers and sisters to inherit from each other. 729.

And the mother to inherit. 733.

Texas allows a bastard to inherit from and through the mother and transmit the inheritance. 729.

And the mother from him. 733.

Vermont permits inheritance between illegitimates. 725.

And the mother from them. 733.

Virginia permits inheritance between illegitimates. 723.

And from and by the mother. 727, 733.

West Virginia permits inheritance from the mother as though legitimate. 727.

ILLEGITIMATES—(*continued*).

And by the mother and her kindred. 733.

Wisconsin allows illegitimates to inherit on the marriage of the parents, but without being legitimated. 731.

The mother and her kindred inherit from the bastard. 733.

*Legitimated by Marriage.*

Roman law so provided. 730.

Common law denied. 730.

By statutes in Alabama. 731.

Arkansas. 731.

California. 731.

Georgia. 731.

Illinois. 731.

Indiana. 731.

Kentucky. 731.

Maryland. 731.

Massachusetts. 731.

Michigan. 731.

Mississippi. 731.

Missouri. 731.

New Hampshire. 731.

Ohio. 731.

Oregon. 731.

Pennsylvania. 731.

Vermont. 731.

Virginia. 731.

West Virginia. 731.

Recognition should accompany the marriage. 731.

*Legitimated by Statute.*

Though the marriage be deemed null in law in Arkansas. 732.

Missouri. 732.

Nebraska. 732.

Nevada. 732.

Ohio. 732.

Texas. 732.

Virginia. 732.

West Virginia. 732.

Wisconsin. 732.

Where the marriage is annulled after birth of the child, on ground of former husband or wife still living, or of insanity, in California. 732.

Where one party to a void marriage has acted in good faith, in Louisiana. 732.

*Mode of making Legitimate. See supra.*

Completion in lifetime of illegitimate not necessary. 731.

By application to Court in Georgia. 731.

Mississippi. 731.

North Carolina. 731.

Tennessee. 731.

Father must have been unmarried, at time of birth of the child, in Georgia. 731.

North Carolina. 731.

Tennessee. 731.

By writing in Alabama. 731.

Michigan. 731.

By acknowledgment and other actions of the father, in California. 732.  
Nevada. 732.

## INFANTS. See PARTNERSHIP.

*Accounting for Estate.*

Settlement of guardian's account during minority, may be disregarded by the infant. 66.

INFANTS—(*continued*).*Custody.*

Mother is entitled to, when she is driven from the father by inhuman treatment. 67.

## INNS AND TAVERNS.

*Rights of Guests.*

Protection must be afforded to a guest from injury by other persons. 160.

Injury from a falling ceiling, renders the host liable to the guests. 159.

Disease contracted by a guest, may be a cause of action for damages against the host. 159.

Goods of a guest lost must be paid for by the host. 158.

Intoxicated person allowed on the premises and injuring a guest, makes the host liable. 156.

## INSOLVENCY.

*Defined.*

The condition of one who is presently unable to pay his debts. 467.

*Extra-territorial Effect.*

Insolvency laws have no effect beyond the State, and a State tribunal has jurisdiction over a non-resident creditor only when he voluntarily appears. 612.

Only through forming part of the obligation of the contract can a State insolvency law have any extra-territorial effect. 623.

*Foreign Creditors.*

Prior insolvent laws deprive non-resident creditors of their property, without due process of law and in violation of the Fourteenth Amendment of the Constitution of the United States, and a decree of discharge under such laws is void for want of jurisdiction over such creditors. 611.

Prior insolvent laws do not impair the obligation of contracts with non-resident creditors. 612.

Objection to discharge of the debtor is not a waiver of any rights, and does not render a discharge binding upon the non-resident creditor. 615.

## INSURANCE. See CORPORATIONS, LIFE INSURANCE.

*Actions.*

Penalty denounced by the statutes of Wisconsin, for failure to make an annual statement of business, is a pecuniary fine, by way of punishment, and cannot be made the foundation of a civil action in the U. S. Courts. 802.

*Agent.*

Policy limits his authority. 197.

Policy does not limit a general agent. 200.

*Application.*

Soliciting agent acts for the insurers when he writes down the answer of an applicant. 534.

Stipulation on the face of the application, that all the statements, answers, and descriptions are the act of the applicant, is an attempt to create on paper, an agency which in fact does not exist. 534.

Falsely filling out the blanks by the solicitor, when the applicant had furnished truthful information, and had signed the application on the presumption that his answers had been correctly written down, does not bind the applicant. 534.

*Arbitration.*

Agreement to arbitrate is a waiver of the written notice of loss, but not of the origin of the fire nor the interest of the owner. 207.

*Incumbrance Clause.*

Judgment by confession entered without the knowledge of the insured, and against an agreement with the holder of the confession, is a violation of this clause in a policy. 403.

INSURANCE—(*continued*).

Subjecting the insured to the expense of plans of the building burned and of more formal proofs of loss than the preliminary proofs, and the delay of an appraisalment, after full knowledge of a breach of this clause, and without making objection to the claim for the indemnity, is a waiver. 607.

*Insurable Interest.*

The policy itself is *prima facie* evidence of insurable interest without further allegation in the pleadings. 607.

Existence of an insurable interest, both at the time of writing the policy and of the loss, is necessary for a recovery. 468.

*Not Commerce.*

Constitution of U. S., under its commerce clause, does not protect the issuing of a policy to one domiciled in another State. 207.

*Occupation.*

Permanent is meant, when the policy refers to adjoining buildings as increasing the risk. 207.

*Policies.*

Estoppel may be invoked against the policy. 202.

Conditional contract of insurance may be made without regard to limitations contained in policies. 201.

Doubtful construed against the insurers. 207.

Revival does not occur by asking for renewal without receiving a reply. 260.

Prior policy, though in the name of one of two joint owners, will avoid a subsequent policy in the name of both, and containing a condition avoiding the prior policy of insurance, on the same property, if the same is not disclosed. 802.

*Proximate Cause.*

Tobacco smoking not having caused the fire, will not prevent a recovery, although the application answered "No" to the question, "Is smoking allowed?" 802.

*Subrogation.*

Subrogation not granted to the insurer who has paid the shipper's loss. 272.

*Waiver.* See *Arbitration.*

Policy must be followed. 202.

Oral is valid, when policy is not sealed. 202.

## INTEREST.

*Rate.*

"Until maturity" in a note, does not mean that the same rate shall continue after maturity. 63.

*Usury.*

Attorney's fees on sums collected by suit, may be made payable by the debtor. 805.

Commission may be paid to intermediary, through whom a loan is effected, where the lender neither takes nor contracts to take anything beyond lawful interest. 805.

Interest overdue, may be made to bear interest. 806.

Loan to discharge an usurious debt is not affected by the usury. 140.

Personal plea, unless the borrower is insolvent and a fund is in Court for distribution. 140.

## INTERPLEADER.

*Stakeholder.*

Claimants can only be required to interplead, by a stakeholder. 404.

Personal interest in the result prevents one being considered a stakeholder. 404.

**INTER-STATE COMMERCE.***Commercial Travellers.*

Drummers cannot be taxed. 77, 89, 181, 208, 547, 733.

Peddlers cannot be taxed. 90, 181.

*Contracts.*

Comity does not require the Courts of a State to enforce a contract, illegal in their State, though valid where made. 303.

*Corporations.*

Corporations engaged in, cannot be taxed by the States for the privilege. 182.

*Goods in the Original Packages.*

*Brown v. Maryland*, 25 U. S. 447, is no longer authority on the right to sell importations in the original package, in spite of State laws. 553. (See 181.)

*Inspection Laws.*

*Bona fide*, may be made by a State. 179.

Sanitary laws of a State are valid. 179, 180.

*Monopolies.*

A State cannot create a monopoly in Inter-State commerce. 180.

*Passenger Traffic.*

Colored passengers must have accommodations paid for. 272, 544.

Passengers tax laws are invalid. 180, 180, 182.

Passage from State to State, can be governed by police regulations, but cannot otherwise be restrained by a State. 546.

*Regulation.* See RAILROADS, TELEGRAPH COMPANIES.

Congress has exclusive power over subjects of a national character and requiring uniformity of regulation. 177, 548.

State regulations of a local nature are superseded when Congress prescribes regulations. 177.

Inter-state railroad traffic cannot be regulated by the States severally. 179.

Products of a particular State cannot be excluded by another State. 180, 548.

Oyster planting may be forbidden in the waters of a State, to citizens of other States. 546.

*State Licenses.*

Licenses may be required to be taken out by a railroad engineer, as it is only a police regulation. 171, 340.

Licenses for sale of products of other States cannot be required. 180.

**INTER-STATE COMMERCE ACT.** See EXPRESS COMPANIES, RAILROADS.*Damages.*

Claims for damages present a case for a common law jury trial, and the Commission will not entertain it. 272.

*Discrimination.*

Defined to be the doing or allowing to one what is denied to another. 207.

Unjust when designed for the benefit of the carrier only. 136.

*Jurisdiction of the Commission.* See EXPRESS COMPANIES.

Jurisdiction of the commission is strictly statutory. 136.

Construction of the law is to be liberal. 136.

Only to carriers within the terms of the first section of the Act. 136.

Even though some of the carrier's transactions are not affected by the Act. 135.

Local railroads, wholly within one State, but operated as a link in inter-state communication, is subject to the Act. 273.

Stage companies not subject to the Act. 135.

Steamboat companies independent of railroads, are not subject to the Act. 135.

Traffic originating in the State of New Jersey, but delivered at Jersey City, to which point the freight is paid, is not inter-state traffic, though intended for New York City. 662.



INTER-STATE COMMERCE ACT—(*continued*).*Petroleum Oil.*

Known rates must alone be charged, without preference of tanks over barrels. 273, 662.

Or allowance for return loads, etc. 273.

And by the hundred pounds and not by the barrel. 662.

Tank cars cannot be demanded by a shipper, as one of the "facilities" mentioned in the last subdivision of § 3 of the Act. 736.

Nor as one of the "instrumentalities of shipment," in § 1 of the Act. 737.

*Rates.*

Trade centres not entitled to more favorable rates than smaller towns. 468.

Transportation is a matter of right, without a previous contract. 273.

Underbilling the weight or giving false classification is prohibited. 339.

Classification sheets of freight charges are issued for the public information, and are intended to be expressed in such plain terms that an ordinary business man can understand the classification and determine, in connection with the rate sheet, the charges for transportation; the authority preparing the classification sheets must leave them to speak for themselves, and terms of art, etc., must be construed as understood in the particular trades, not as construed by the railroad authorities. 662.

## JUDGMENT.

*Confessed.*

Presumptions relating to confessed judgments are the same as those relating to other judgments, when questioned collaterally. 404.

*Foreign Judgments.*

Parol evidence is admissible to show that the foreign judgment which is the foundation of the suit, was rendered without personal service. 619.

Even though the record of the foreign judgment asserts the contrary. 619.

*Without Personal Service.*

Non-resident debtor cannot have a valid judgment rendered against him, without personal service in the State or his voluntary appearance to the action. 614.

Judgment rendered without personal service within the State, violates the Fourteenth Amendment of the Constitution of the United States, because rendered without due process of law. 614, 620.

Objection to the service does not waive the non-resident's rights, and does not make the judgment valid. 615.

## JURORS IN CRIMINAL CASES.

*Challenges. See Peremptory Challenges.*

The Court may exclude a juror, on its own motion and without a challenge. 45.

*Contra*, in Texas. 45.

New trial will not be granted, when a challenge for cause is improperly overruled, provided the peremptory challenges be not exhausted. 27, 44.

*Jurors.*

Testimony of an accomplice is disbelieved by some men, and therefore a juror may be interrogated as to whether he would believe such a witness. 535.

Conscientious scruples against capital punishment disqualify the juror. 47.

Opinions formed from rumor or the newspapers do not disqualify. 27, 46. Unfriendly feelings towards the accused, do not disqualify. 47.

*Peremptory Challenges.*

May be made at any time before the jury are sworn. 45.

**JURORS IN CRIMINAL CASES—***(continued).*

Cannot be increased by withdrawing such a challenge made after all the peremptory challenges have been exhausted. 64.

Each defendant has the full number. 44.

But the State has only the same number as if there was only one defendant. 44.

**LAND.***Conveyance.*

Nebraska code as to effect of a decree to convey, applies to decrees in U. S. Courts. 272.

Recitals do not bind strangers claiming by adverse or paramount titles. 338.

*Description.*

Adjoining tract conveyed by "appurtenances," as an exception. 136.

Exception particularly made to a general description, is good. 206.

A piece of land described as parts of mentioned lots may be particularized by parol evidence, as this is a case of a patent ambiguity, to be explained, without adding to, contradicting, or varying the writing. 272.

Where the description, in a deed of conveyance, was by metes and bounds, and also by reference to a map shown to be so inaccurate as to prevent a surveyor from laying off the land conveyed, the reference to the map should be treated as surplusage, and parol evidence of the true location admitted to identify the metes and bounds. 661.

*Ejectment.*

Intruder, may be recovered against, in ejectment, on proof of prior continuous possession. 338.

*Improvements.*

Value cannot be recovered, when parties making, know that they have no title. 265.

*Interest.*

Denied, though the rents were less in amount, where the grantor refused to convey until compelled by a decree to do so, and in the meantime took the rents for his own use. 662.

*Offer to Sell.*

Continuous, need not be withdrawn. 134.

Terminated by sale to a third person. 134.

Opinions, not statements of facts, may be expressed by the vendor of a silver mine, when the purchaser undertakes to make examinations of his own and the vendor does not prevent. 467.

Option to purchase with time essential, not extended by mere verbal promise. 135.

*Purchase Money.*

Bond given for purchase money may be defended against on the ground that the title was void. 253.

Payment of purchase money relieved from in Pennsylvania for defect in title and incumbrances, more than elsewhere. 256.

Elsewhere, the intentions of the parties are the guide. 259.

Recovery for failure of title, not supported in Pennsylvania. 257.

*Sale.*

Time stipulated in a written contract, is of the essence of the contract. 135.

Parol authority to sell land, will not authorize an agent to sign a written contract of sale, unless the parol authority also authorized the signing of a written contract; and the purchaser is always bound to ascertain the extent of the agent's authority. 659.

**LEGAL EDUCATION.***Leading Articles on.*

Relation of the courts and law schools to. 71, 341, 407.

Teaching of law by the case system. 416.

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## LESSOR AND LESSEE.

*Liability of the Landlord.*

Lessor liable for construction or condition of the demised premises, dangerous to passers-by, unless the tenant has contracted to put them into proper repair. 244, 248, 251.

Lessor not liable for overflow of water-closet under control of another tenant. 67.

*Vendee.*

Rent paid in advance must be allowed by the sheriff's vendee. 339.

## LIBEL.

*Effigy.*

When hung in a public street, and placarded with words which a person is known to the neighbors as habitually using. 737.

*Epithets.*

Illegitimate child, libellous *per se*. 404.

*Injunction against.*

Trade libels not enjoined in England, except in the clearest cases. 493.

Proofs must be such as would satisfy a jury. 508.

The libel must be positively described to the Court. 508.

Contempt of Court, when a libel, so punished before the English Judicature Act of 1873. 498.

Publication of libel, being a crime, was not restrained by injunction in England before the Judicature Act of 1873, unless the enjoyment of property was prevented or means of gaining a livelihood diminished. 498, 499.

Trade libels now enjoined in England by force of the Judicature Act of 1873. 501, 594.

American Courts follow the English decisions prior to their Judicature Act and refuse an Injunction. 504.

*Privileged Communications.* See WITNESSES.

Pleadings in the ordinary course of justice are privileged. 535.

Petition for the removal of a co-receiver, on the ground of embezzlement, though containing false and malicious statements, is privileged. 535.

## LIFE INSURANCE.

*Accident Policy.* See *Death*.

Provision that the policy should not extend to any bodily injury of which there should be no external and visible sign upon the body of the assured, means any injury not fatal. 663.

*Answers of Applicant.*

Untruth not within the knowledge or belief of the applicant, does not avoid the policy. 468.

*Application.*

Penna. law (May 11, 1881), merely affects the remedy in requiring a copy of the application to be attached to the policy, and is constitutional. 536.

*Assignment.*

False representations by applicant will not prevent recovery, where the company receives the premiums from the assignee, after knowing the fraud. 404.

Original insurable interest not necessary if the assignment is an honest exchange of property and not a mere wagering transaction. 468.

A full paid policy in favor of the wife or her legal representatives was transferred by her as collateral security for a debt of her husband; the assignment is binding upon the wife, after the husband's death. 663.

*Death of Beneficiary.*

Revokes appointment and makes the money payable to the personal representatives, unless the rules of the company prescribe another. 374.

Otherwise in Pennsylvania. 380.

First wife was made the beneficiary and after her death, the husband

**LIFE INSURANCE—(continued).**

married again and died, leaving a second wife, to whom the money was paid under a rule directing its payment to his widow. 374.

*Death. See Suicide.*

Bodily injuries cause death through external, violent, and accidental means within such terms of a policy of accident insurance, where a person in good health, and generally of sound and strong constitution, is driving in a public road, and, upon his horse taking fright and running a considerable distance, in imminent peril of colliding with other teams, the insured exerts himself in controlling the horse, and immediately afterwards experienced great sickness and pain, and died in about an hour; if the death was caused by fright merely, still the act of the horse in running away was the efficient and true cause of the death. 607.

The dead body is external and visible sign enough, that an injury was received. 663.

Presumption of death from absence for more than seven years, does not involve the presumption that the death occurred at the end of the seven years, but the exact time may be established by evidence. 803.

*Division among Beneficiaries.*

Where the certificate of a mutual benefit society declares the fund is payable to the wife for the benefit of herself and his children, without the proportions being prescribed in the certificate or in the constitution and by-laws of the society, the widow has no right to fix the proportions, but the widow and children of the insured, take in equal shares, though one of the children has married and lives in another house. 607.

*Intemperate Habits.*

Conduct towards his family and his habit of drinking, proved step by step, may establish that the insured was of intemperate habits. 536.

Risk must be actually increased by the habits of the insured, without regard to extreme views on the temperance question. 536.

*Physician.*

Waiver of professional confidence secured by statute of Michigan, may be made by a clause in the application and policy. 737.

*Suicide.*

Policy not avoided, when the act is committed to avoid arrest, and the policy, in terms, becomes void on death in consequence of the violation of any criminal law. 803.

Policy is avoided when the act is committed during temporary insanity and the policy, in terms, becomes void if the assured commit suicide, felonious or otherwise, sane or insane. 803.

*Tontine Policy.*

When the condition of such a policy is, that "all surplus or profits derived from such policies on the ten year dividend system as shall cease to be in force before the completion of their requisite ten-year dividend periods shall be apportioned equitably among such policies of the same class as shall complete their ten-year dividend period," gives no title to specific moneys, and do not create a trust relation between the insured, and the company, and the Courts can only interfere after the company has made a division which is averred to be inequitable within the meaning of the contract. 607.

**LIMITATION.***Absence.*

Running of the statute is not suspended when the defendant occasionally returns to a house, within the State, and kept by him as a residence for his wife. 608.

When process cannot be so served as to bind the defendant personally, his absence from the State will suspend the running of the statute. 608.

LIMITATION—(*continued*).*Adverse Possession.*

Vendee of a mere intruder who brought a title from one claiming a right, can set up. 273.

*Lapse of Time.*

A railroad bridge constructed in 1853, on trestles, and so maintained until 1883, when it backs up the stream for the first time, is not protected by the lapse of the period (20 years) for acquiring a prescriptive right, as there could be no prescription until an injury had been inflicted. 609.

*Promise to pay.*

When made before the bar of the statute, does not create a new cause of action, but merely a suspension of the bar. 273.

*Stopping the Running of the Statute.*

Absence from the State will be deducted on a plea of the statute. 67.

## LIQUOR LAWS.

*Actions.*

Price of liquors, sold for delivery in a State whose laws forbid it, cannot be recovered in the Courts of that State. 303.

*Bar-room.*

Place for the sale of intoxicating liquor at retail, for consumption at the place of sale. 137.

*Constitutionality.*

Constitution of the United States and its Amendments do not prevent a State from licensing or prohibiting the sale of liquor, so far as the State laws are regulations of domestic affairs. 137, 180, 208, 551, 703. Discrimination in favor of native wines is invalid. 180.

Police power of a State is the division of power exercised in passing laws for the license or prohibition of liquor traffic. 137, 208, 550.

Common carriers cannot refuse to carry intoxicating liquors from State to State, and State laws forbidding them to do so, are void. 468, 553.

Screens and other obstructions of the view into a bar-room or liquor saloon, may be forbidden at times when the saloon ought to be kept closed: it is not an unreasonable search which is forbidden by the Constitution. 536.

Evidence of the reputation of a building as a place for the sale of intoxicating liquors is not in conflict with the constitutional provision, securing to all persons prosecuted for crimes, the right to be confronted with the witnesses against them. 552.

*Definition.*

Cider is an alcoholic, vinous and fermented liquor, and its sale is forbidden by a statute prohibiting the sale of such liquors, without naming cider. 737.

*Licenses.*

Sale of domestic wines may be licensed under a general law, and is not forbidden by a Local Option Act, containing a proviso that the latter Act shall not interfere with the manufacture and sale of domestic wines or cider. 137.

Consent of a certain number of freeholders for the granting of a license, may be required. 208.

Distance from a town may be used as an element in grading the price of a license. 208.

## MALICIOUS PROSECUTION.

*Probable Cause.*

A question for the jury, when there is a substantial dispute over the facts. 208.

*Prima facie*, wanting on discharge from arrest by authority of U. S. commissioner. 208.

**MANDAMUS.***Public Records.*

Must be opened to any one having a present and existing right in information to be obtained therefrom; and a mandamus will lie, though it is intended to make copies or abstracts. 537.

*Relator.*

Personal feeling or the undoing of an act once approved, is ground for denying the writ. 405.

Special interest not necessary, where a public right is involved. 469.

**MARRIAGE. See CRIMINAL LAW.***Common law.*

*Per verba de presenti.* 101.

*Per verba de futuro*, followed by consummation. 101, 103.

Valid, where the local statute contains no express words to the contrary. 100, 104.

Not valid in Va. 98. Or W. Va. 94.

*Contract.*

Constitution of U. S. does not protect, as the contract when made, becomes an institution regulated by law and not terminable by agreement. 467.

*Duress.*

Marriage annulled for duress where a young man of sixteen is falsely arrested on a charge of bastardy, is greatly frightened at the thought of being committed to jail for want of bail before trial because his father refuses to become his bail, and under the advice of his father marries the woman and does not cohabit with her, the woman being old and of bad repute. 608.

*Reputation.*

Illicit cohabitation is presumed to continue. 98.

*Solemnization.*

Conclusive evidence of mutual consent. 102.

Minister's right to act, does not affect. 106.

Necessary in England. 103.

Delaware. 106.

Kentucky (by statute). 106

Maine. 106.

Maryland. 103, 105.

Massachusetts. 103, 106.

North Carolina. 103, 106.

Oregon. 106.

Tennessee. 106.

Texas. 106.

Not necessary in Alabama. 102, 104.

California. 102, 105.

Georgia. 102, 105.

Illinois. 102, 105.

Indiana. 102.

Iowa. 102, 105.

Kansas. 102.

Kentucky. 102, 106.

Louisiana. 105.

Michigan. 102, 105.

Minnesota. 102, 105.

Mississippi. 103, 105.

Missouri. 103, 105.

New Hampshire. 105.

New Jersey. 106.

New York. 103, 105.

Ohio. 103.

Pennsylvania. 103, 105.

South Carolina. 105.

**MARRIAGE—(continued).**

Not necessary in Tennessee. 103, 106.  
     U. S. Courts. 103, 105.  
     Wisconsin. 105.

West Virginia local statutes must be observed. 94.

**MARRIED WOMEN. See CRIMINAL LAW.****Acknowledgments.**

Duress or fraud only avoids a wife's acknowledgment. 137.  
 Angry command without threats of personal violence does not avoid the wife's acknowledgment, because not duress. 137.

**Adultery.**

Connivance by the husband is more than direct participation; it generally means a corrupt intent on his part. 359.

**Estoppel.**

Contractual power, the extent of an estoppel on the wife. 51.  
 Representations made during the execution of her mortgage, will estop her. 48.

**Loans.**

*Bona fide* purchase not made out by loan to husband. 66.

**Necessaries.**

Adulteress, living with her husband, may order. 358.  
 Husband liable when he connives at his wife's adultery. 356, 359.

**Property.**

Land conveyed to wife on a compromise of a divorce suit, will not be decreed to be reconveyed by her on subsequently beginning another suit for divorce on the same ground as the former suit, but for actions committed after the compromise. 802.

Divorce does not place the wife in the position of a surety, so as to allow her to sue her husband for the inchoate value of her dower in land mortgaged by him. 803.

**Services of the Wife.**

Contract by the husband to pay for, not implied from cohabiting without lawful marriage. 466.

**MARSHALLING ASSETS.****Contribution.**

Review of the English cases. 740.

**General Proposition.**

If a paramount incumbrancer of two funds, by his election of remedies, disappoints a junior creditor, who has a lien upon one of them only, the latter shall, to that extent, be substituted to the lien of the paramount incumbrance upon the other fund bound by it, as against the debtor and all claiming under him, by lien or title, subsequent in time. 739.

**Marshalling.**

Kindred theory to the doctrine of contribution. 744.

Of early date, especially in administering the estates of decedents and insolvents. 744.

Review of the English cases. 744.

Irish cases. 750.

Canadian cases. 752.

Pennsylvania cases. 753.

Other American cases. 753, 765.

Civil law doctrine. 752.

**MASTER AND SERVANT.****Contributory Negligence. See NEGLIGENCE.****Defective Appliances.**

Care in use of appliances, on the part of the master, need not be clearly proved. 67.

**MASTER AND SERVANT—(continued).**

Reasonable safety in the construction of a machine, is a question for the jury. 68.

The jury must find whether the servant assumed the risk when he continued in his employment for two weeks after giving notice of the defect whereby he was injured. 209.

Inspection without sufficient care, renders the employer liable. 210.

Design may be used when in general use and skilful persons are divided in opinion as to its safety. 209.

Breakage during proper use for the purpose intended, is evidence of defective condition. 469.

The employer is liable, although the negligent management by a co-employé contributed to the accident. 803.

Implements furnished must be selected with reasonable care and kept in good and safe repair. 803.

*Discharge.*

Reasonable diligence in seeking another place must be considered in fixing his damages. 208.

Unskilfulness no reason for discharge when the alleged loss was caused by the master directing him to make certain experiments. 274.

*Fellow Servants.*

Railroad employés may be empowered by State laws, to sue for injuries from fellow servants. 139.

Foreman of a mine and a laborer employed by him, are not. 68.

Foreman and trackmen of a section gang, are. 210.

Trackmen and engineer or brakeman, are. 138.

Locomotive engineers on different trains. 664.

Malicious acts of servant must be ratified by the master before the latter is liable. 273.

The master is responsible for an injury to his servant, occasioned by the joint negligence of the master and a fellow servant. 608.

*Liability of Third Persons.*

Employer of the master is not liable to a third person for injury or death during any work not a nuisance *per se*. 769.

Or, to a servant of the employed master. 771.

*Release of Damages.*

Express messenger may release the carrying company, in consideration of being allowed to ride in the baggage car. 738.

*Risk of Employment.*

Death caused by accidental breaking of a telegraph wire. 138.

Increased danger of railroading from rain, snow, ice, etc. 210.

Special trains of which notice is never given to trackmen. 210.

Switch stand within nine or ten inches of a car, in violation of a rule of the company, is not a risk of the employment, and a brakeman injured by it while standing on the car step, in the performance of his duty, may recover damages. 805.

*Slander.*

Discharged servant will be enjoined in England, under the Judicature Act of 1873, from slandering his former master to his customers. 503.

*Strikes.*

Banners cannot be carried before a factory as a means of deterring men from working there at the time of a strike and in pursuance of a scheme of intimidation. 535.

Injunction will be granted to restrain such carrying of banners, when continuous. 535.

**MAXIMS.**

*Damnum absque injuria*, explained. 5.

A legal maxim is the most general of general rules. 739.



## MECHANICS' LIENS.

*Fixtures.*

Pump, placed in the basement of a building, planted down on the ground and connected to steam and water pipes, is a fixture for which a lien may be claimed. 802.

## MINING LAW.

*Royalty.*

Not profit, but part of the estate which will be distributed by the Court, amongst lien creditors in order of priority, on an application to stay waste. 469.

*Surface Support.*

This is an absolute right in Pennsylvania, and not to be taken away by implication. 663.

Waiver of right to support is not made in a conveyance of underlying coal by the owner of both surface and coal, by a proviso, that the grantee of the mineral right shall do as little damage to the surface as possible. 663.

## MISTAKE.

*Of Fact.*

Money paid may be recovered. 258.

Mutual, relieved from, when a tax sale was supposed to have made a good title. 253.

*Of Law.*

Insertion of words omitted because thought unnecessary, will not be decreed. 63.

## MONKEYS. See ANIMALS.

## MORTGAGE.

*Assignment.*

Assignee's rights are fixed at the time of the assignment. 69.

*Chattel Mortgage.* See *Description* and *PARTNERSHIP*.

Oral agreement by a hotel boarder, that his goods should remain in the room occupied by him, as security for his unpaid bill, constitutes a valid mortgage in Kansas. 608.

*Consideration.*

Consideration not affected by subsequent transactions between mortgagor and mortgagee, with agreement to this effect. 69.

Release of a claim on other property, is a sufficient consideration for a chattel mortgage. 69.

*Description.*

Personalty mentioned in general terms and described as situate in particular rooms of a named building, is sufficiently described. 315.

*Foreclosure.*

Decree for may be made, where the trustee in the mortgage has sold with the assent of the debtor, to satisfy one of three notes secured by the mortgage. 70.

Decree for, will be made though the property is in the hands of a receiver. 315.

Decree for is not prevented by a previous personal judgment. 317.

Action for foreclosure is limited to twenty years in Florida, when the mortgage is under seal. 274.

Bar of Statute of Limitations against actions on the notes secured by the mortgage, does not prevent foreclosure. 274.

Surety on an injunction bond given to stay the sale of railroad rolling stock, under a judgment against the railroad company, is entitled to be reimbursed out of the proceeds of the sale of the railroad under a mortgage thereon; the case is a special one, dependent upon the discretion of the Court under the circumstances that the trustees of the mortgage might have protected their interest in the rolling-stock by

**MORTGAGE—(continued).**

filing a foreclosure bill and obtaining an injunction and a receiver, but did not, and permitted the railroad and the surety to act for their benefit. 609.

*Fraudulent.*

Sale of personalty mortgaged and accounting for proceeds to mortgagee, raises a question of fraud in fact and not in law, in Indiana. 316.

Estoppel to assert arises where subsequent mortgage recognizes the prior one as subsisting. 317.

*Lease.*

Not affected by assignment to a mortgagee, when the property is leased for public purposes, as such a contract as a lease, where the lessor had nothing to do beyond receiving the rent, is not embraced within § 3737, Rev. Stat. U. S. 736.

*Lien.*

Delivery is essential to a valid lien. 317.

Delivery does not take place at the time when the papers are executed, with a blank for the mortgagee's name, and the lien is postponed. 536.

Name inserted in a blank left for the mortgagee's name, when the person named is not the lender and knows nothing of the transaction, does not make a valid delivery, and the mortgage lien is postponed to all valid, junior liens. 536.

*Parol Defeasance.*

A deed, absolute on its face, may be converted into a mortgage by clear, unequivocal and convincing oral testimony. 663.

*Personal Property.*

Ice stored by the lessee of the mortgagor, before the foreclosure, does not become the property of the purchaser at the sale, although it was cut from a pond covered by the mortgage. 804.

*Possession of the Land.*

Possession by the mortgagor is not adverse to the mortgagee. 274.

*Subrogation.*

Subrogation allowed to a mortgagee, subsequent to a judgment. 276.

*Rents and Profits.*

Mortgagee cannot appropriate, immediately on default, when the trust deed permits the mortgagor to remain in possession until default, when the mortgagee may sell. 737.

**MUNICIPALITIES.***Exclusive Privileges.*

Gas and water pipes, laid by a stock corporation, require express statutory authority to be an exclusive privilege. 405.

*Highways. See Negligence.*

Duty to keep in a safe condition for public use, is recognized at common law. 768, 770.

And in New York. 771.

*License Fees. See Telegraph Companies.*

Reasonable, in amount, are valid. 427.

**NATIONAL BANKS.***Cashier.*

Business may be engaged in by the cashier of a national bank, State laws to the contrary being void as to such cashiers. 465.

*Examiner.*

Acts of the examiner, in behalf of the bank, do not bind the bank. 133.

*Stock.*

Registration of the ownership of the stock of a national bank is not required by the Act of Congress. 336.

Taxation of national bank stock may be equalized with that of State banks, but not increased so as to be equalized with all personal property taxed by a State. 659.

**NEGLIGENCE.** See MASTER AND SERVANT.

General rule in the U. S. Courts is, that a municipality is not liable for negligence of the contractor, which is purely collateral to the work. 774.

Otherwise, if the direct result of the contract. 774.

Municipal corporations in New York, are not liable for the firing of a blast in a public street, by a contractor engaged in constructing a sewer, under a contract providing for entire control of the work and payment by him of all damages from necessary blasting. 766.

So, in Pennsylvania. 773.

Missouri. 774.

*Contra*, in Indiana. 768.

Illinois. 773.

Generally liable for the negligence of a contractor. 772.

Especially, continuing in effect after the contractor has ceased work. 772, 774.

Municipalities in Missouri, are liable for the negligence of private persons or corporations, who have been allowed to use the streets. 774.

*Contra*, in Pennsylvania. 774.

Where an officer is charged with the duty of repairing the highways, the county or city is not liable. 774.

*Cases Considered.*

*Thorogood v. Bryan* criticised. 119, 127.

And denied. 664.

*Contributory.* See ANIMALS, RAILROADS.

Whether a servant, injured after giving warning of danger to his employer, has been guilty of contributory negligence in continuing in his employment, is a question for the jury. 68.

Riding by invitation is not at the risk of the driver's negligence. 117, 131, 664.

Driver leaving a team unhitched in a city street, is chargeable with contributory negligence. 274.

Invitation to enter the premises, requires the owner to have them in a safe condition. 274.

Right side of the road may be taken on a dark night, although a collision might not have occurred if that side had not been taken. 405.

Cabman cannot recover for an injury to his vehicle by a fire engine, when he had violated a municipal ordinance in obstructing the passage and the engine was entitled to a right of way. 536.

Plaintiff, at half-past ten in the forenoon, approached a trench dug across a city sidewalk, for half its width, with the earth thrown up on one side to the height of three feet. The trench had been dug to make a sewer connection. The plaintiff observed the trench, walked around the bank of earth, and stopping to look into a store window, stepped backwards into the trench. He was guilty of contributory negligence. 608.

*Contributory, on Railroads.* See *Stop, Look, and Listen Rule.*

Walking on a railroad trestle, which is approached by a curve, is contributory negligence. 139.

Standing between two tracks, where there is danger of being crushed because the place is a yard where many trains are being made up, is contributory negligence on the part of an experienced railroad man whose duty does not require him to be there. 537.

Driving in front of a locomotive, which is standing on a part of a street crossing and making the usual noises, when the next street crossing is clear, is contributory negligence. 664.

*Contributory on Vessels.*

Not a bar to a suit, in the admiralty, for damages arising from personal injury, though not to be overlooked. 665.

The fault of the injured seaman may deprive him of general damages,

**NEGLIGENCE—(continued).**

but, under the circumstances of each case, partial or special compensation will be allowed. 665.

When a mate was coaling a tug, in the usual way, with a barrow, which was liable to make him lose his balance and fall from the gang plank, and this occurred, and resulted in a fractured leg, wages were awarded to the mate whilst being treated gratuitously in the hospital. 665.

Because passengers are carried, they are not open to the public when lying at a wharf, loading freight; and a person who enters unobserved and is injured while passing a hatchway, cannot recover. 660.

*Fire.*

When a locomotive communicates fire to adjacent property, there must be proof of negligent management to render the company liable. 210.

*Independent Contractor.*

Negligence of an independent contractor is not imputed to his hirer. 274.

Owner interfering with an independent contractor is liable to a workman as master. 536.

Owner liable to a workman of an independent contractor, when the contract provides that the owner's supervising architect shall give final directions, and an injury follows obedience to such directions. 536.

*Presumption.*

Snow and ice allowed to remain for nine days, on a sidewalk patrolled by a policeman and several times passed over by a selectman, creates an inference of negligence in the municipality. 70.

Common law presumption may be enacted in relation to railroads, without violating the 14th Amendt. Const. U. S. 271.

Statutory presumption, that the killing of live stock by railroad cars was negligent, takes away the equal protection of the law; the statute is void. 274.

No presumption of negligent killing arises from running over a man on the track, who had been awakened some time previous and assented to a suggestion that it would be better to get off. 804.

Street-car driver is presumed to be negligent when his car is driven at an unusual rate of speed, until suddenly struck by the shaft of a passing truck, which injures a passenger. 405.

*Province of the Court.*

Question of law, when facts are not disputed. 209.

*Stop, Look, and Listen Rule.*

Contributory negligence must be charged against one crossing a double-track railroad immediately after the passage of a train, without observing this rule. 138.

*Prima facie*, there is contributory negligence when a person is injured on a crossing well known to him. 139.

This rule is not enforced where a train moves away from the only crossing, and its return for switching purposes is not expected, and is concealed by other cars and a freight house. 470.

Nor at the crossing of a constantly travelled street in a populous city, where numerous trains are constantly passing and repassing and the railroad maintains gates and flagmen; if the gates are open, this is an invitation to cross promptly, even with horses at a trot. 664.

**NOTARY PUBLIC.**

*Acknowledgment.*

Denial of sufficiency, under Indiana Code, requires affirmative pleading. 314.

*Attestation Clause.*

Not important. 320.

*Certificates by.*

Invalid without seal. 323.

NOTARY PUBLIC—(*continued*).*Damages.*

Failure to record a mortgage in time creates no liability, until a loss occur. 402.

*Seal.*

Another notary's may be used, in Indiana. 310.

Judicial notice is taken of the seal. 322.

Required, because statutory provision is so. 318.

Impression necessary. 319.

Impression may be made at any time. 324.

Wax not important. 320.

Place not important. 320.

Record of an acknowledgment should show that the seal was affixed. 321.

Validity may be contested. 323.

*Surety for.*

Liability does not arise until notary is shown to be insolvent after a loss from negligence. 403.

## NUISANCE.

*Defined.*

The continuous doing of something which interferes with another's health or comfort. 15.

Damages from the exercise of a lawful trade, must be substantial. 275, 440.

Business, however lawful, materially interfering with the ordinary comfort of human existence. 447.

Place may make. 16, 453.

*Individual Peculiarities.*

Physical discomfort, from a morbid taste or excited imagination, cannot create a nuisance. 440, 454, 447.

Susceptibility to disease may be inferred by the jury, when the defendant, out of many persons, is alone attacked. 274.

*Instances.*

Dam, to make an ice pond in a navigable stream, is a nuisance. 242.

Livery stable is not prohibited by a covenant forbidding cow stables, or any other dangerous, noxious, unwholesome or offensive establishment. 209.

Public assemblage is not. 209.

Undertaker's establishment in a city is not. 275, 440.

## OFFICIAL DUTIES.

*Discretionary Authority.*

Can only be questioned, as to power of the officer or imposition upon him. 339.

## OGDEN v. SAUNDERS. 12 Wheaton, 213-369.

*Reviewed.*

Decided on principles of international law. 617.

Same result now attained under the Fourteenth Amendment of the Constitution of the United States as to State insolvency. 612.

Not based on impairment of the obligation of contract. 618.

## PARTNERSHIP.

*Accountant.*

Assets used in wheat gambling, by one partner, must still be accounted for. 206.

No accounting can be demanded where partnership agreement never went into effect. 137.

Not barred by lapse of time, when no final balance has been struck. 275.

*Bankrupt Partner.*

Solvent firm, in renewing a firm note, do not renew the liability of a

**PARTNERSHIP—(continued).**

partner who became bankrupt and obtained his discharge before the renewal, but without actual notice to the payee. 531.

*Chattel Mortgage.*

In Iowa one partner cannot execute, just previous to a general assignment, a chattel mortgage, substantially covering the stock in trade, unless his partner, expressly or by implication, assent. 608.

One partner, without the assent of his co-partner, may make a chattel mortgage of all the firm assets, if done in good faith. 663.

*Profits.*

Stranger may receive the share belonging to a partner, in private transaction with the partner, without becoming liable as a partner. 138.

Compensation received in the form of profits creates a partnership as to third persons. 138.

Guaranty of 20 per cent. profits, made by one partner to another, is an independent undertaking. 275.

Community of interest in profits and capital creates a partnership liability as to third persons. 537.

*Retiring Partner.*

Subrogated to rights of creditors he has paid, where new firms hold the assets in trust. 335.

Liability not lost without assent of creditor. 335.

*Subrogation.*

Partner who has paid firm debts not substituted in place of such creditors until the other firm creditors are paid. 469.

*Infants.*

Affirmance of the partnership articles occurs when an infant partner files a bill for a receiver, even though in his bill he renounces the partnership arrangement, and asks to avoid and annul his obligations. 520.

Disaffirmance of the partnership contract may be made by the infant within a reasonable time after he attains his majority. 528.

Debts cannot be repudiated by an infant partner who receives a share in the profits. 528.

Services due to his parents are released by the parent's consent to the infant's entrance into the partnership. 529.

Partnership with an infant is a contract voidable by the infant, but it is not void. 529.

Individual liability for the partnership debts cannot be fixed upon an infant partner. 529.

Acts of an infant partner, which are within the scope of the firm business, are binding upon the firm. 530.

False assertion of full age at the time of the formation of the partnership does not prevent an infant from afterwards disaffirming it. 530.

Partner of full age cannot resist firm creditors on the ground that the partnership is voidable. 530.

*New Partner.*

Old debts only assumed by agreement. 329, 330, 332.

Old creditors cannot sue on promise of assumption made by the new partner to the firm. 331, 332.

Agreement to assume old debts is inferred from slight evidence. 333.

*Surviving.*

A general assignment of the assets of an insolvent firm, with preferences, can be made by the surviving partner; he is the legal owner and not a trustee. 609.

**PATENTS.***Assignment.*

A patent having been obtained at joint expense, its assignment will be compelled, even though merely agreed upon by parol. 138.

**PATENTS—(continued).***Jurisdiction.*

The United States Courts have no jurisdiction over contracts relating to a patent, until its validity is drawn into question. 469.

*License.*

No particular form of words. 737.

Anything which confers upon another, the right to do an act which would otherwise be illegal. 737.

A covenant not to sue for future infringements, is a license which cannot be annulled on failure to account. 737.

*State Regulations.*

Promissory notes, given in payment for a patent right, are required by the Penna. Act 12 April, 1872, P. L. 60, to bear upon their face, in prominent and legible writing, the words "given for a patent right;" this Act is constitutional and a valuable police regulation. 532.

*Validity.*

Prior public use invalidates. 138.

Celluloid patent is not defeated by the fact that experiments with the whole list of essential oils would have revealed the cheapness of fusel oil as solvent of camphor, in conjunction with nitro-cellulose; the use of the more expensive alcohol, for many years, is inconsistent with a mere exercise of judgment. 663.

**PEDDLERS.***Taxation.*

License is a police regulation and not a tax on a particular occupation. 208.

Classification of, for taxation, is valid. 208.

**PLEADING.***Complaint.*

Good on demurrer when plaintiff entitled to part of relief. 48.

**PLEDGE.***Certificates of Stock.*

When obtained by false representations, may be specifically recovered from a holder as collateral security. 405.

*Possession of Personal Property.*

Effectual lien only created by. 339.

*Title to Personal Property.*

Title as owner, under contract to sell, vests in pledgee where he takes bill of lading in his own name and looks to the property. 107, 109.

**PILOTS.***Regulation of.*

States may regulate in the absence of national legislation. 177

**POLICE POWERS. See WATERS.***Damages.*

The compensation for loss from the State's exercise of its police powers, is not allowed to an individual, because there is no disturbance in the lawful use of his property. 552.

*Defined.*

The whole system of internal regulations, by which order is preserved, offences are prevented, conflict of rights is avoided and uninterrupted enjoyment of each one's own is secured, as far as reasonably consistent with the like enjoyment by others. 702.

The protection of the lives, the health and the property of the community is the object of the police powers of a State. 550.

**14th Amendt. Const. U. S.**

The State is not thereby deprived of its police power, but its exercise is now subject to the paramount authority of the national government. 140, 550.

**POLICE POWERS—(continued).**

The late Amendments to the Constitution of the United States are not designed to interfere with the police powers of the State, when prescribing regulations to promote the health, peace, morals, education, and good order of the people, and legislating so as to increase the industries of the State, develop its resources and add to its wealth and prosperity. 694, 703.

*Limitations upon.* See *Fourteenth Amendment Constitution of the United States* and CONSTITUTIONAL LAW.

The State cannot limit its police power, by contract. 550.

*Valid Exercise of.* See LIQUOR LAWS.

Infectious diseases may be required by a municipal ordinance, to be reported to the health authorities by physicians, without compensation; this is not a taking of the physician's time without compensation, within the provisions of the State or National Constitution. 605.

Gifts as an inducement to purchase goods may not be forbidden by law; such a law is not a proper exercise of police power, as not designed to protect the public health, comfort, and safety, or carry out the public policy. 532.

Milk may be required to contain not less than a specified per cent. of solids, and not more of watery fluid. 402.

Exclusive privilege of maintaining a slaughter-house is a valid exercise of this power. 703.

The State may regulate the business of warehousing, carried on exclusively within its own limits. 703.

The manufacture of oleomargarine may be forbidden. 703.

**POST-OFFICE.**

*Fraudulent Use.*

Each time a letter is taken out or deposited, the penalty for a fraudulent use of the mails, is incurred. 137.

**PRACTICE.**

*Filing Papers.*

Delivery into official custody is a legal filing. 209.

*Service.*

Non-resident may be served with a summons in another suit, while attending Court in the prosecution of the former suit. 664.

**PRINCIPAL AND AGENT.** See ATTORNEY-AT-LAW, LAND.

*Extent of Authority.*

Travelling salesman procured a customer of his firm to indorse his draft for his accommodation; the indorser had no remedy against the firm, although twice before such drafts had been paid by the firm. 804.

*Irrevocable Interest.*

Coupled with a power is an interest in the thing itself and not in the product. 531.

Not where the State of Missouri had appointed an agent, and received from him, security for the faithful prosecution of a claim of the State against the United States in consideration of an agreed commission on the amount collected, all expenses to be borne by the agent: and the State could revoke the agency. 531.

*Lien of Agent.*

Real estate broker has a lien on the specific paper prepared by him, for his work thereon, his commissions and money paid at request of his principal. 464.

Real estate broker cannot recover commissions until he has procured a contract enforceable between the seller and the buyer found by the broker. 533.

*Ratification.*

Relation back will not take place where one of four principals withdraws his previous assent before all the other three give theirs. 804.



RABBITS. See ANIMALS.

RAILROADS. See INTER-STATE COMMERCE ACT.

*Baggage.*

Trade articles, after checking, may be recovered for, as ordinary baggage. 275.

Reasonable time for claiming is exceeded by leaving the baggage from noon until 10 A. M. of the next day. 275.

*Cars.*

Traffic going off the carrier's road may be refused cars when they are needed on the road. 136.

Adequate number, with all possible equality in distribution, must be furnished. 273.

Shipper should be allowed equal and public rates for his own cars. 272.

*Crossings.* See NEGLIGENCE.

Engineers must seek to avoid accidents at highway crossings. 210.

Trains have priority of passage at highway crossings. 210.

Clear track may be presumed by an engineer of a passenger train who sees a loaded team slowly approaching the track on an up-grade; having given the usual signal and his train being in plain view, he is not bound to slacken his speed or presume that the driver of the team is asleep. 738.

Highway crossings must be constructed by a railroad in a reasonable manner, and with reference to the double use by travellers and trains. 537.

*Employés.* See MASTER AND SERVANT.

*Fences along.*

Police power of the State extended to. 178.

*Fire.*

Cars after delivery on a private track are not at the risk of the company. 210.

*Income.*

Earnings need not be accumulated by a lessee upon rent fixed at a percentage of gross income, to meet a possible failure in the future rental. 537.

*Operation.* See TRAFFIC.

Police power of the State extends to regulating the running of the trains. 178.

Railroad engineers may be required by a State law, to take out a license. 171.

Liability for, not escaped by placing it in the hands of others. 275.

Captiously withholding conveniences from the public must generally be redressed by the Legislature, and as a rule, railroad management cannot be judicially interfered with, unless there is a specific act to be done in a clear and undoubted manner. 609.

*Passengers.* See *Police, Tickets.*

Jumping from a moving train, through fear not caused by the employés, creates no liability in the company. 405.

Person invited to ride, by the baggage-master, is not a passenger. 470.

Passing from car to car of a rapidly moving train, is at the risk of the passenger, even though occurring after the conductor's remark that he might leave the train at the next station, by taking the rear car. 470.

Conductor cannot make the company liable for the consequences of advice which he gives to a passenger, whereby the passenger is injured. 138.

A passenger has a reasonable time to leave the train, and the length of time which is reasonable may be inferred to have elapsed from similar passengers having alighted. 275.

Invitation, by a person in the known uniform of the railroad, to enter a train, stopped away from a station, is sufficient to rebut a presumption of negligence for not entering at the station. 664.

**RAILROADS—(continued).***Police.*

Police assisting in removing a passenger from a train are only special agents of the company until the passenger becomes disorderly. 537.

Disorderly persons may be removed from the cars by the city police, without any right of action accruing against the railroad company. 804.

*Right of Way.*

Land owner cannot use any part of the right of way of a railroad in actual operation, nor can he recover from a trespasser thereon. 537.

*Stations and Depots.*

Access by recognized approach must be kept reasonably safe. 405.

Suitable stations may be required by the State, under its police power. 178.

Stations for freight or passengers cannot be established by writ of *mandamus*. 609.

Lights need not be kept burning in a station for the convenience of a passenger who has missed the last train for the night and remains whilst the station-master is locking up, after having ample time to depart. 537.

*Tickets.*

Time limit expressed in a ticket is valid. 210.

Refusal to pay fare, show ticket, or leave the train, may be followed by forcible ejection with the assistance of the police. 537.

*Track.*

Employé of a user under license may recover for defects in the track. 139.

*Traffic. See Operation.*

Legislature can control the tariffs of a railroad not protected by its charter, and the Courts cannot interfere if the tariffs are improperly limited by law. 537.

And may classify the tariffs, in the absence of charter restriction, according to the length of the line, provided all railroads are uniformly classified. 738.

Joint tariffs not objectionable, unless made for an unjust effect. 468.

Switching charges may be regulated by a State, in the exercise of police power. 139.

Reasonable through rates must be made by through and continuous lines, operated by companies under one control or ownership, without regard to the portions of through rates credited to the different companies; though such portions will be examined in determining the reasonableness of the through rates. 662.

Freight and passengers must be received from a connecting road and reception will be enforced by a mandatory injunction. 738.

Refusal on the ground of a threatened strike, is not permissible. 738.

*Taxes.*

Gross receipts may be taxed by a State. 182.

Franchises conferred by Congress, upon railroads across the States and Territories of the Union are valid, under the power to regulate commerce, and cannot be taxed by the States, without the permission of Congress. 662.

**REMOVAL OF CAUSES FROM STATE COURTS.***Jurisdiction.*

Condemnation proceedings under a State statute, when property of a non-resident is to be taken, may be removed. 340.

Removal papers of an action from a State Court, on the ground of citizenship, must show the ground of jurisdiction in the Circuit Court, as there is no precedent known which would authorize the showing, after removal, of grounds for jurisdiction not presented to the State Court. 666.

REMOVAL OF CAUSES FROM STATE COURTS—(*continued*).*Prejudice.*

Inability to obtain justice in the State Court, cannot be made the ground for removal, since the Act of 1887, by filing an affidavit of belief; the fact must be established by affidavit or otherwise. 610.

*Remanding Order.*

Not reviewable by the S. Ct. U. S. since the Act of 1887. 139.

*Separable Controversy.*

Where a citizen of Massachusetts files a bill in a State Court of New York against a Connecticut corporation and a New York corporation, praying for damages and an accounting by the Connecticut corporation, there is a separable controversy which the Connecticut corporation may remove to the U. S. Court under the Act of 1887. 610.

RES GESTÆ. See ANIMALS.

RIPARIAN OWNERS. See BRIDGES.

*Extent of Ownership.*

English doctrine of private ownership by the crown, of all land below high water mark of tidal waters, early relaxed here and now largely changed by custom or statute. 792.

On non-tidal waters, riparian ownership generally extends *ad medium aque filum*. 796.

On large ponds riparian ownership generally extends to high water-mark, beyond which the State owns. 797.

On the great lakes, this is almost universally true. 797.

Wharfing out to navigable water, generally allowed, so long navigation is not interfered with. 797.

Also, the building of breakwaters and embankments to protect the shore. 798.

But made land on the lakes, belongs to the State. 799.

*Connecticut.*

State owns below high water-mark. 794.

Wharves and docks may be built by riparian owner, by custom, if navigation is not interfered with. 794.

Right to wharf and fill is in the riparian owner exclusively. 794.

It may be alienated, separately from the shore. 794.

*Florida.*

State alone can bring ejectment against a stranger who has erected a wharf in front of another's land. 795.

*Illinois.*

Riparian ownership extends *ad medium aque filum* of the Mississippi, including islands separated from the mainland by arms of the river. 468.

*Iowa.*

The Mississippi is a navigable river and the State owns below ordinary high water. 707.

*Maine.*

The Massachusetts Ordinance of 1647, extended to Maine after that became part of the Commonwealth. 793.

Low water-mark is taken to be ordinary low water only. 793, 794.

*Maryland.*

Statute authorizes riparian owners to fill adjacent flats. 795.

Improvements made by a stranger, in front of the shore, belong to the riparian owner. 795.

The State cannot (since 1862) grant the land under water, to a stranger. 795.

*Massachusetts.*

Ordinance of 1647 (1641) gives actual ownership to the riparian owner, in tidal flats, or to a line 100 rods from high water-mark, if low water was further out. 793.

RIPARIAN OWNERS—(*continued*).

Expressly subject to public rights of navigation and fishery. 793.

All other land under tidal waters, is owned by the Commonwealth. 793.

Low water-mark means the lowest mark. 793.

*Missouri.*

The State owns below ordinary high water-mark of the Mississippi, as it is a navigable stream. 797.

*New Hampshire.*

Custom has made the Massachusetts Ordinance operative. 794.

*New Jersey.*

Same principles prevail, as in Connecticut. 794.

Except that the right to wharf is a mere franchise, revokable by the State before exercise. 794.

Made land cannot be taken from the riparian owner by the State, without due compensation. 794.

Tidal flats may be occupied by a stranger, without compensation to the riparian owner. 795.

*New York.*

State owns the land under tidal waters. 796.

And may fill flats, without compensating the riparian owner. 796.

Erections by the riparian owner, below high water-mark, are *purprestures*. 796.

Wharves may be erected by riparian owners and remain private property. 796.

But they belong to the State and may be claimed by it. 796.

Bed of Lake Champlain belongs to the State. 797.

*Oregon.*

Statute authorizes riparian owners to fill tidal flats. 795.

*Pennsylvania.*

Riparian ownership extends to low water-mark. 796.

Wharves or filling out beyond high water mark, in tidal waters, require permission from the State. 796.

Otherwise, on non-tidal streams. 796.

Stranger may be authorized to build a wharf, but must not interfere with the riparian owner's access to the water. 796.

*Rhode Island.*

State owns the land under water. 795.

Statute allows riparian owner to reclaim tidal flats, so long as navigation is not interfered with. 795.

*Virginia.*

Statutes extend riparian titles to low water-mark. 795.

And authorizes wharves, as far as convenient, if they do not interfere with navigation. 795.

*Made Land.*

Property lines are to be extended over artificially made land in a cove on the same principles as over natural alluvium. 538.

*Navigable Waters.*

English definition not adopted by many States. 797.

*Paramount Rights.*

Navigation and commerce are rights paramount to those of public fishery. 775.

*State Ownership.* See BRIDGES.

The shore and land, under the waters of navigable streams and waters, are held by the State, in trust, for the public uses of navigation and fishery, and the erection of wharves, piers, light-houses, beacons, and other facilities of navigation and commerce. 775.

Before the Revolution, land below high water-mark formed parts of the *jura regalia* of the crown. 790, 792.

And devolved on the States, by right of conquest. 790.

## SALE.

*Conditional.*

Valid, between the parties, in all the States and Territories. 592.

Valid when evidenced by a receipt for a promissory note, specifying that the note was given for the purchase of  $379\frac{1}{2}$  shares of corporate stock, then held by the signer of the receipt, and to be delivered on the payment of the note. 533.

Failure to comply with the conditions of sale, permits the seller either to retake possession or sue for the value of the article sold. 586.

Power of sale, given to the buyer, bars the seller from claiming the goods from one who purchased from the buyer, whether the original seller be paid or not. 589.

Power of sale given to the buyer, renders the contract void as to the execution creditors of the buyer. 588.

United States Courts uphold, against creditors of the buyer without notice of the conditions. 591.

*Contra*, as to creditors and *bona fide purchasers* from the buyer, in Illinois. 591, 594.

Kentucky. 591.

Maryland. 591.

Pennsylvania. 591.

In some cases, recording of the contract of conditional sale, is required in Alabama. 593.

Arizona. 593.

Arkansas. 593.

Dakota. 593.

Florida. 594.

Illinois. 594.

Maine. 595.

Mississippi. 595.

New York. 595.

Recording is imperative, in Georgia. 595.

Iowa. 596.

Kentucky. 596.

Minnesota. 596.

Missouri. 597.

Nebraska. 597.

New Hampshire. 597.

North Carolina. 598.

Ohio. 598.

South Carolina. 599.

Texas. 599.

Vermont. 599.

Virginia. 599.

West Virginia. 600.

Wisconsin. 585.

Writing, but not recording, is required in case of furniture or other household effects, in Massachusetts. 600.

Neither writing, nor recording, is required in California. 601.

Colorado. 601.

Connecticut. 601.

Delaware. 601.

Idaho. 602.

Indiana. 602.

Kansas. 602.

Michigan. 602.

Montana. 602.

Nevada. 602.

New Jersey. 602.

New Mexico. 602.

Oregon. 602.

**SALE—(continued).**

Neither writing, nor recording, is required in Rhode Island. 603.  
 Tennessee. 603.  
 Utah. 603.  
 Wash. Territory. 603.  
 Wyoming. 603.

*Defective Goods.*

Acceptance, after request, not to receive if defective, waives objections to the price. 211.

*Executory Agreements.*

Where the goods are thereafter to be made, weighed and delivered, the contract remains executory, though the price has been fixed. 211.

Where, in Kansas, a grain deal is found by the jury, under proper instructions, to be a gambling contract, no recovery can be had. 803.

*On Trial and to Satisfaction.*

Good faith in rejecting goods bought on trial and to be kept if they suit, is all that is required; the objection may seem unreasonable to others, and yet be sustained by the Court in a suit for the price, if not merely capricious. 576.

Purchaser is the sole judge and the seller agrees to submit to the purchaser's preference made in good faith, where the sale is made on trial and to the satisfaction of the buyer. 578.

Purchaser is liable, where the article is rejected in bad faith or through fraud. 579.

*Notice of Conditions of Sale.*

Notice to the attaching creditor of the conditions of the sale of personalty about to be seized is sufficient to bind the sheriff and to render him liable as for a wrongful seizure. 583.

*Situs of the Property.*

Situs of the property and not the place where the contract is made, determines the law applicable to its construction. 603.

*Title.*

Consignee of goods sent to C. O. D., cannot maintain replevin. 211.

*Warranty.*

Set-off for breach of, is the difference between the value at the time of the sale, and that of goods conformable to the warranty. 466.

**SCHOOLS.**

*Master's Rights and Duties.*

Power nearly as great as that of a parent. 435.

Power to punish scholars for violations of the rule, or his lawful and reasonable commands. 439.

Powers begin when the pupil leaves home and continue until his return thither. 440.

Presumption always exists that the teacher was only doing his duty. 434, 438.

Motive of the master is to be considered, unless the punishment is excessive. 437.

*Punishment of Scholars.*

Assault and battery does not occur when, without malice, the teacher strikes nine sharp blows with a two-pronged stick, as punishment for carrying off the teacher's overcoat. 430.

Insubordination may be reasonably punished. 430, 433, 436.

Objects are reformation, maintenance of discipline and example to other scholars. 436.

And legitimately also to give pain as well as degradation. 434.

Manslaughter is at least the grade of crime, for causing death by excessive punishment. 437, 439.

Excessive punishment not excused by parental sanction. 437, 439.

Majority of pupil, does not relieve him from punishment. 437.

**SCHOOLS—(continued).**

Specific offence should be the cause, but need not be distinctly stated. 437.

Excess of the punishment, a question for the jury. 438, 439.

Causes for punishment are defacing or injuring the room and books, etc.; stirring up insubordination; heaping odium on the master; immoral writings and pictures; swearing and quarrelling; and the like. 439.

Truancy may be punished. 440.

**SET OFF***Equitable.*

May be invoked as a complete defence against loan brokers seeking to enforce the terms of a loan, on proof of their betrayal of the interests of the borrower, their principal. 664.

*At Law.*

Conversion of personalty cannot be made the subject of set-off, as it is not a matter arising out of debt, duty, or contract. 538.

**SHIPPING. See ADMIRALTY.***Supplies.*

Maritime lien for supplies furnished to a vessel, in her home port, cannot be implied, as they are presumed in the absence of a contract for an express lien, to be furnished on the credit of the owner. 665.

*Tug-boats and Tows.*

Anchors sufficiently strong to hold a tug and her tow, ought to be carried by the tug, at a season when violent squalls are not infrequent, and the tug has not sufficient engine power to counteract the strength of the squall. 734.

**STATUTES.***Approval by the Executive.*

Signing of a bill by the governor, at any place on the bill, intentionally and understandingly, is a sufficient compliance with the constitutional provision requiring every bill which shall have passed the Senate and House of Representatives, to be presented to the governor, and if he approves it, he shall sign it. 605.

*Local Act.*

Valid when applicable to all cities of a limited class, though not including all the cities of the State. 205, 271.

*Locality.*

Amendment to an Act of Congress, restricted in operation to a certain locality, does not enlarge the limitation, when evidently not so intended, though capable of a wider construction. 470.

*One Subject: see Title.*

Action prescribed in a law and the officers to superintend such action together constitute but one subject in a statute. 205.

*Performance.*

Constitution prescribing the manner of performing an act prohibits a law directing a different manner of performance. 205

*Treaty.*

Self-executing treaty must yield to a later inconsistent statute, and vice versa. 205.

*Title of an Act.*

Amendment of an existing law may be made by citing its title alone. 205, 271.

Intention to tax all property of religious, etc., bodies from which they derive any revenue, by a proviso in an exempting Act, must be expressed in the title of the Act or that much of the Act will be void. 205.

Object of an Act, entitled "An Act providing for placing Electrical Con-

STATUTES—(*continued*).

ductors under ground in cities of this State and for Commissioners of Electrical Subways," is sufficiently expressed and is single. 205.

Object of an Act entitled "An Act to create the Newport fire and police district in Campbell County and to provide for the government thereof," is sufficiently expressed and is a single object within a constitutional requirement to this effect. 272.

Object of an Act to prohibit the manufacture and sale of liquors, where a majority of the electors of a county shall so vote, is not sufficiently expressed in these words: "An Act to regulate the manufacture and sale of malt, brewed, fermented, spirituous, and vinous liquors in this State." 605.

*Variance.*

Act as passed governs if any difference appears between it and the public printed copy. 139.

## STATUTE OF FRAUDS.

*Fraud.*

Jury must decide, where sale of stock in store is made to a clerk for his notes at one, two, and three years.

*Memorandum.*

Insufficient for decreeing a conveyance, when merely a letter expressing a wish to relinquish all interest in the land, for a loan of money. 66.

*Vendee.*

In an absolute transfer, must be proved to have participated in the fraud. 65.

May prove fraudulent intent in his vendor, when sufficiency of plea of fraud is not objected to. 65.

## STOCKS AND BONDS.

*Sale.*

Specific performance of stock ordinarily sold on the market, will not be enforced. 466.

## SUBROGATION.

*Foundation of Right.*

Payment, not a conditional tender, must be made. 276.

## SUMMONS.

*Writ of.*

Seal necessary. 326.

## SUNDAY LAWS.

*Validity.*

Privileges must not be specially conferred by, upon some classes of business. 212.

## TAXATION.

*Place.*

Mortgages held by a trust estate are taxable at the place of residence of the trustees. 340.

*Taxable Subjects.*

Unearned premiums of an insurance company are not an indebtedness, and may be taxed. 70.

Insurance companies not relieved from further taxation by having to pay to the State a percentage upon their capital. 70.

## TELEGRAPH COMPANIES.

*Criminal Proceedings.*

Obstructing the highway, by erecting poles without authority, is ground for a criminal prosecution. 430.

*Forged Messages.*

Telegraph company is liable for money forwarded by express on receipt



**TELEGRAPH COMPANIES—(continued).**

of a forged message sent by a local operator of the telegraph company, who was also local express agent. 805.

*License by Municipalities.*

Contract arises from acceptance and fulfilment of the terms of the license. 422.

Contract is not open to revocation, by a proviso in the municipal ordinance, that the acts and doings of the company under this ordinance, should be subject to future ordinances; the future ordinances must not be inconsistent with the original. 422.

Reasonable fee may be exacted, for use of the streets, etc. 427.

*Notice on Printed Blanks.*

Sender is bound by a notice that the company would not be liable beyond the amount received for sending, in case of non-delivery of an unrepeat message. 406.

Printed agreement on a night message blank, "that the sender will agree that he will not claim damages for errors or delays, or for non-delivery of such messages, happening for any cause, beyond a sum equal to ten times the amount paid for transmission," "is void, as against public policy." 665.

*Preservation of Lines.*

English statute. 429.

Damages are recoverable in a civil action for want of skill in navigating over submarine cables. 429.

Injunction against removal of poles by municipality, refused when right is unsettled. 430.

*Regulation by Municipalities. See License by Municipalities.*

Reasonable, are valid. 428.

Broken and unsightly poles must not be erected. 428.

Wires may only take a prescribed route and elevation. 428.

Absence of regulation gives no right to declare wires and poles a nuisance. 428.

*Taxation of.*

Gross receipts may be taxed by a State, so long as only local receipts are taxed. 182, 212, 805.

Injunction against operation of line until a State tax is paid, is prevented by the U. S. Statute of 1866. 532.

Privilege of maintaining poles, etc., cannot be made the subject of an annual charge, as such charge is neither a tax, a license, nor an exercise of police powers. 422. (This is in La.; *contra* in Penna. 427.)

Shares of stock in telegraph companies can be made the nominal basis of taxation by a State, in the proportion which the length of line within the State bears to the whole length. 532.

*Transmission of Messages.*

Punishment may be prescribed by the State for failure to properly transmit. 178.

Failure to transmit at all permits recovery of full damages, although the message being in cipher, only a limited recovery in case of error had been agreed upon. 805.

Delay in transmission creates no liability unless the face of the message puts the company on its guard. 406.

Regulation of Inter-State messages cannot be by State laws. 179.

Fire at a repeating station, caused by atmospheric conditions, short circuiting the currents on the switchboard, destroyed the operating room before anything could be rescued and the message was never delivered; the company was not liable, because the fire could not be prevented. 665.

**TENDER.***Insufficient in Amount.*

Of no avail. 139.

**TRADEMARK.***Accounting.*

Refused in an equity suit for an infringement, when there had been no fraud, and the trade generally had used the mark for nearly four years. 665.

*Name.*

Person cannot use his own name, with the addition of the word "improved," as a trademark, when he has already used his name as a description of an article of his manufacture and has sold the trademark with the business of such manufacture. 610.

*Title.*

Goods marked with the particular mark selected, must be actually placed on the market, to give a title to the trademark; it is not enough to select a mark, not in use, to distinguish goods of the same class or kind already in the market, and make a public declaration of the intention to apply the mark to goods to be placed on the market. 610.

**TRESPASS.** See **ANIMALS.****TRIAL.***Instructions to the Jury.*

Complimentary remarks as to the knowledge of one of the jurymen will not be ground for a new trial. 212.

**TRUST.***Cestui Que Trust.*

Not a necessary party to a suit to defeat the trust, when trustee can act without consent of the cestui que trust. 212.

*Conversion.*

Land devised to be sold and proceeds divided, is a conversion, and the money must be accounted for in good faith and with reasonable diligence. 406.

*Power of Appointment.* See **WILLS.***Precatory.* See **CHARITABLE BEQUESTS.**

Confidence expressed in a legatee that he would carry out a provision, creates a trust. 140, 455.

Construction not so liberal as in times past. 461.

Fee simple devise is not affected by precatory words. 463, 806.

Full discretion given the devisee, destroys the trust. 463, 806.

Imperative intention must exist in the words. 462.

Words of commendation, request, entreaty, wish or expectation, can create a trust in Missouri. 140, 457.

*Contra*, in Pennsylvania. 462.

*Resulting.*

Evidence must be very clear, and an admission by the holder of the title that another is the owner, is not entitled to much weight. 406.

In favor of the benefited person, for the title of the whole property, where a loan is made and the title is taken by the lender with a promise to convey on repayment. 805.

*Trustee.*

Personally liable for a deficiency on the sale of premises mortgaged by him under the style of "trustee" in the bond and mortgage; unless there are facts which show a waiver of the mortgagee's rights to enforce such personal responsibility. 665.

**TURNPIKES.***Payment of Toll.*

Toll-gate keeper may close the gate to prevent a threatened passage of the gate, without paying toll, by a team lashed by its driver, unless the rapidly approaching team is so near as to render the closing of the gate a reckless disregard for the safety of the parties trying to evade payment of the toll. 666.

## VENIRE.

*For Grand Jury.*

Seal necessary. 327.

## WATERS. See RIPARIAN OWNERS.

*Navigation.*

Appropriations by Congress for the improvement of a navigable river, do not involve an assumption of police power also. 703.

*Port of Entry.*

When Congress confers the privileges of a port of entry, it does not take away the police power of the State. 703.

*Surface.*

Drains, naturally existing, must be preserved. 403.

Barriers or divides, naturally existing, must not be destroyed. 403.

*Wharfrage.*

Reasonable compensation is constitutional. 178.

## WILLS. See CHARITABLE BEQUESTS, DECEDENT'S ESTATE, TRUSTS.

*Agreement to Bequeath or Devise.*

Contract, founded in sufficient consideration, to make provision by will for a particular person, is valid. 183.

Contract may be in consideration of services to be rendered, if the services are actually performed. 185.

Even if no promise to perform were made. 185, 192.

Contract to make provision by will, generally inferred, where services have been rendered in good faith. 189.

Contract must be certain. 192.

Contract satisfied by eight years' support and devise of a property. 276.

Contract to make a particular devise, entered into fairly and not against public morals and reasonable, is valid. 276.

Contract to devise all one's property, is within the Statute of Frauds and invalid. 184.

Otherwise may be oral. 184.

*Execution.*

Power of appointment over an estate, real and personal, in remainder, given by a testatrix, domiciled in South Carolina, to be exercised by her daughter's will, "duly executed," can only be exercised by a will executed according to the requirements of the South Carolina law; the daughter's will being executed according to the laws of another State, where she was domiciled, and duly admitted to probate, and an exemplification filed in South Carolina, was not a valid exercise of the power unless the law of the daughter's domicile and that of South Carolina were alike in their requirements for due execution of a will. 666.

*Life Estate.*

Devise of land, to be occupied during natural life, without power of alienation or subjection to debts. 806.

But the restrictions are void as to creditors. 806.

*Principal and Income.*

Principal of an estate to be drawn upon to supply deficiency in income, is a devise of a repeated use without reimbursement. 140.

*Revocation.*

Revocation requires testamentary capacity. 140.

Revocation by destruction, with intention of writing another will, does not revive a former will. 140.

*Testamentary Capacity. See Revocation.*

Omission to bequeath to relatives, no evidence of want of. 212.

*Undue Influence.*

Solicitation alone cannot constitute. 212.

## WITNESSES.

*Affidavits.*

Same privileges as oral testimony. 715.

*Privileges. See Restrictions upon.*

In England, the privilege against civil actions, or any criminal proceedings, except for perjury and for conspiracy, is absolute. 707, 712.

In the U. S. the weight of authority favors greater restriction than is allowed in England. 712, 719.

*Hoar v. Wood*, 3 Metc. 193 (1841), the leading case in America. 717.

In Alabama, relevant and pertinent testimony is protected. 718.

In Louisiana, the statements of the witness must be pertinent and material to the issue. 717.

In Maryland, a witness may utter false, malicious, and defamatory words, in a judicial proceeding, without liability therefor. 538, 706.

In Massachusetts, the qualification is that private malice must not be indulged in. 717.

In New York, there is no protection for words merely uttered to defame. 718.

In Tennessee, testimony given in good faith, is protected. 719.

In Vermont, the privilege will not protect irrelevant and malicious statements. 718.

In Wisconsin, the protection is extended to responsive statements and to those upon whose impertinence or impropriety no advice is given by the Court. 718.

*Restrictions Upon.*

The privilege does not extend to anything said or done, before entering or after leaving the witness box. 710.

Nor to matters having no reference to the cause in which the evidence is given. 710.

But the irrelevancy of the evidence does not take away the privilege. 714.

If the evidence is pertinent. 717.

## WRITTEN EVIDENCE.

*Production.*

Books and papers need not be produced before a notary, when inadmissible in evidence. 212.

*Interlineation.*

Not explainable when contract is unambiguous and no fraud or mistake is alleged. 134.

*Handwriting.*

Decedent's handwriting may be proved by one who had never seen him write, but had seen letters and addresses on newspapers coming from him. 207.

*Validity.*

Printing is writing in the legal sense of the term, and an instrument whose words are printed, either wholly or in part, is equally valid with a paper written with a pen. 666.

Signature by impression from a stamp is valid at common law. 666.